

**FREEDOM OF INFORMATION
AND
PRIVACY ACTS**

**SUBJECT: MANUAL OF INVESTIGATIVE
OPERATIONS AND GUIDELINES (MIOG)**

**UPDATES
PART 1 VOL.1**



FEDERAL BUREAU OF INVESTIGATION

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MANUAL OF INVESTIGATIVE OPERATIONS AND GUIDELINES

PART I

VOLUME I

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PART I
SECTION 12. DRUGS

12-8 PURCHASE OF DRUGS AS EVIDENCE/TRANSACTIONAL INVESTIGATIONS

(1) The SAC or, in SAC's absence, the ASAC, may personally approve the purchase of drug evidence up to \$5,000 if the purchase does not exceed the initial \$5,000 case fund authority. Within 30 days of approving such an expenditure, SACs will submit an airtel to FBIHQ advising by case title the amount of funds approved, the type and amount of drugs purchased, and any statistical accomplishments attained. The purchase of drug evidence with Bureau funds exceeding \$5,000 will require prior FBIHQ authorization and the personal approval of the SAC or, in the absence of the SAC, the ASAC. [(See MIOG, Part II, 10-14.1.6.)]

(2) Transactional (purchase of drug evidence, buy/bust) and interdiction cases necessitate the use of substantial manpower, involve significant financial expenditures, and require highly specialized storage facilities. As a result, this authority will be tightly restricted by FBIHQ to the following situations:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

(e) In specific instances where adequate DEA personnel are not available in a particular geographical area and the case justifies FBI participation, based on available FBI resources and investigative priorities [REDACTED]

These exceptions must be specifically set forth to FBIHQ and the responsible SAC should consider all other investigative approaches prior to determining the viability of the transactional method. [REDACTED]

12-8.1 Fronting of Funds for Drug Purchases

As a matter of general policy, Government funds should not be "fronted" (advanced on the promise of a subsequent delivery of drugs). When this technique is deemed necessary, prior FBIHQ authority must be obtained. In requesting authority, an appropriate communication should be submitted to FBIHQ detailing the circumstances, plans for minimizing the risk of loss and justification for the use of this technique.

12-9 REVERSE UNDERCOVER OPERATIONS (RUO)

An RUO involves an undercover approach in which the UCA or informant poses as the drug seller rather than the drug buyer. This technique contains numerous hazards including physical danger to the UCA, or informant, and the potential situation for allowing drugs to enter traffic. This technique should be utilized only against significant traffickers and requires prior FBIHQ authority.

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Item 1 - Title: Provide the full case title to include name of subject(s), victim(s), and complainant. In "Color of Law" cases, fully identify the rank/position of the subject and agency including city and state. If the victim is deceased, write "deceased" behind victim's name and place in parentheses. Thereafter, the classification and office of origin should be listed. The following is an example:

CAPTAIN JOHN DOE,
HUNT POLICE DEPARTMENT,
HUNT, NEW JERSEY;
MICHAEL SMITH (DECEASED) - VICTIM;
MARY SMITH - COMPLAINANT;
CIVIL RIGHTS
OO: NEWARK

Ensure any previous communications are referenced.

Item 2 - Office of Origin File Number: Self-explanatory.

Item 3 - Auxiliary Office File Number: To be completed when an auxiliary office initiates the case and submits the initial FD-610.

Item 4 - Initial/Supplemental Submission: Self-explanatory.

Item 5 - Matter Type: Check appropriate block(s) to best describe the type of case initiated. The type of matter is self-explanatory and has been set forth in such a manner as to best describe separate civil rights subprogram priorities. This format is also used to describe civil rights cases submitted to the DOJ.

Item 6 - Date of Incident: Self-explanatory. If the date of the alleged violation is unknown or ongoing (harassment, failure to take action, etc.), use the latest incident date.

Item 7 - Date of Complaint: This is the date that the complaint is received in the field office/resident agency.

Item 8 - Synopsis of Case: The synopsis should provide a concise summary of the allegation(s). Do not use such phrases as "See LHM" or "Details set forth."

Item 9 - Significant Case: Instructions are on the reverse of the FD-610. If the case is of such a nature that FBIHQ should expedite handling of this case, the "yes" block should be checked. Significant cases are those receiving extensive media attention, involving a prominent individual or extensive media attention, or involving an FBI employee as the subject or victim. Significant cases are also those wherein FBI investigation has determined the allegations to be serious and substantial thus warranting a full investigation. When prosecution becomes imminent, FBIHQ should be advised promptly and a supplemental FD-610 would be submitted designating the case "significant." If there is a question as to whether a case is "significant," contact the CRU, FBIHQ, to resolve the issue.

A "Remarks/Administrative" Section is provided at the bottom of the FD-610 and should be utilized to advise FBIHQ of unusual or administrative matters.

PART I
SECTION 44. CIVIL RIGHTS

44-1 STATUTES

The Civil Rights statutes covered under Section 44 of this manual are as follows:

- (1) Title 18, § 241, USC, Conspiracy Against Rights
- (2) Title 18, § 242, USC, Deprivation of Rights Under Color of Law
- (3) Title 18, § 243, USC, Exclusion of Jurors on Account of Race or Color
- (4) Title 18, § 244, USC, Discrimination Against a Person Wearing Uniform of Armed Forces
- (5) Title 18, § 245, USC, Federally Protected Activities
- (6) Title 18, § 246, USC, Deprivation of Relief Benefits
- (7) Title 18, § 247, USC, Damage to Religious Property; Obstruction of Persons in the Free Exercise of Religious Beliefs.
- (8) Title 42, § 1973i, USC, Voting Rights Act of 1965
- (9) Title 42, § 1973dd, USC, Overseas Citizens Voting Rights Act of 1975

The Civil Rights Program consists of the following classifications: 44 Civil Rights; 50 Involuntary Servitude and Slavery; 173 Civil Rights Act of 1964; 177 Discrimination in Housing; 189 Equal Credit Opportunity Act; 204 Federal Revenue Sharing; 214 Civil Rights of Institutionalized Persons Act.

44-1.1 Title 18, U.S. Code, Section 241 - Conspiracy Against Rights

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any [inhabitant of any State, Territory or District] in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, or because of his/her having exercised the same. It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured. Among the rights secured from interference by private individuals over the years by the courts which have described them as basic substantive rights of Federal citizenship are the following:

- (1) The rights enumerated under the Homestead laws
- (2) The right to vote in a Federal election
- (3) The right of a voter in Federal elections to have his/her ballot fairly counted
- (4) The right to be free from violence while in Federal custody
- (5) The right to assemble and petition the Federal Government
- (6) The right to testify in Federal courts

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- (7) The right to inform a Federal officer of a violation of Federal law
- (8) The right to furnish military supplies to the Federal Government for defense purposes
- (9) The right to enforce a decree of a Federal court by contempt proceedings
- (10) The right of a Federal officer not to be interfered with in the performance of his/her duties
- (11) The right to be free to perform a duty imposed by the Federal Constitution
- (12) The right to travel freely from one state to another

In addition to the above rights, the United States Supreme Court in United States v. Price, 383 US 787 (1966), held that where state participation was involved in the conspiracy, Section 241 covers those rights secured under the 14th Amendment to the U.S. Constitution, which include protection against state action depriving any person of life, liberty, and property without due process of law.

44-1.2 Title 18, U.S. Code, Section 242 - Deprivation of Rights Under Color of Law

① This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any inhabitant those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. ~~This law further prohibits~~ a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any inhabitant to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such inhabitant being an alien or by reason of his/her color or his/her race. [The Department of Justice (DOJ) has advised that case law defines inhabitant as a person whose mere transitory or momentary presence within the United States, its possessions or territories, either legally or illegally is sufficient to bring that person within the jurisdiction of this section. Acts under "color of any law" include acts not only done by Federal, state, or local officials within the bounds or limits of their lawful authority (law, statute, ordinance, regulation, or custom), but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. A private citizen, who is a willful participant with Federal, state or local officials in the commission of "color of law" violations, may also be charged with violation of Title 18, USC, § 242.]

44-1.3 Title 18, U.S. Code, Section 243 - Exclusion of Jurors on Account of Race or Color

This statute holds that no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit jurors in any court of the United States, or any state on account of race, color or previous condition of servitude. It is also a crime for any officer or other person charged with any duty in the selection or summoning of jurors to exclude or fail to summon any citizen for such cause.

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44-1.4 Title 18, U.S. Code, Section 244 - Discrimination Against Persons Wearing Uniform of Armed Forces

This statute makes it a crime for anyone being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, or Possession of the United States to cause any person wearing the uniform of any of the armed forces of the United States to be discriminated against because of that uniform.

44-1.5 Title 18, U.S. Code, Section 245 - Federally Protected Activities

(1) Prohibits willful injury, intimidation, or interference, or attempt to do so, by force or threat of force of any person or class of persons because of their activity as:

(a) A voter, or person qualifying to vote, a candidate campaigning for elective office, a poll watcher, or an election official in any primary, special, or general election which includes all local, state and Federal elections;

(b) A participant in, or a person enjoying, any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(c) An applicant for Federal employment or an employee of the Federal Government;

(d) A juror or prospective juror in a Federal court; or

(e) Participant in, or a person enjoying the benefits of, any program or activity receiving Federal financial assistance.

(2) Prohibits willful injury, intimidation, or interference or attempt to do so, by force or threat of force of any person because of race, color, religion, or national origin and because of his/her activity as:

(a) A student or applicant for admission to any public school or public college;

(b) A participant in, or a person enjoying, any benefit, service, privilege, program, facility, or activity provided or administered by a state or local government;

(c) An applicant for private or state employment or a private or state employee; a member or applicant for membership in any labor organization or hiring hall; or an applicant for employment through any employment agency, labor organization or hiring hall;

(d) A juror or prospective juror in a state court;

(e) A traveler or user of any facility of interstate commerce or common carrier; or

(f) A patron of any public accommodation including hotels, motels, restaurants, lunchrooms, bars, gas stations, theaters, arenas, amusement parks, or any other establishment which serves the public and which is principally engaged in selling food or beverages for consumption on the premises.

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(3) Prohibits interference by force or threat of force against any person because he/she is or has been, or in order to intimidate such person or any other person or class of persons from participating or affording others the opportunity or protection to so participate, or lawfully aiding or encouraging other persons to participate in any of the benefits or activities listed in items (1) and (2), above without discrimination as to race, color, religion, or national origin.

(4) Section 245 is applicable to any person or class of person whether or not they acted under color of law. Section 245 specifically provides that no prosecution of any offense described therein shall be undertaken except upon written certification of the Attorney General that prosecution by the United States is in the public interest and necessary to secure substantial justice.

(5) It is noted that Section 245 applies when force and/or violence is utilized within the context of the above statute. When a violation of Section 245 occurs, criminal penalties attach. Those portions of the above-described statute applying to items (1) (b) and (c) and (2) (a), (b), (c), (e), and (f) are investigated as a violation of the Civil Rights Act of 1964, classification 173, when allegations are of a nonviolent and/or discriminatory nature. Violations of statutes which apply under the 173 classification carry civil rather than criminal penalties. (See Section 173 of this manual for appropriate instructions.)

44-1.6 Title 18, U.S. Code, Section 246 - Deprivation of Relief Benefits

Section 246 provides that no person shall directly or indirectly deprive, attempt to deprive, or threaten to deprive any person of any employment, position, work, compensation, or any other benefit provided for or made possible in whole or in part by any Act of Congress appropriating funds for work relief or relief purposes, on account of political affiliation, race, color, sex, religion, or national origin.

44-1.7 Title 18, U.S. Code, Section 247 - Damage to Religious Property; Obstruction of Persons in the Free Exercise of Religious Beliefs

(1) The statute proscribes two distinct types of conduct: Subsection (a)(1) prohibits intentional damage to, or attempts to damage, religious real property; Subsection (a)(2) prohibits intentional obstruction, or attempted obstruction, by force or threat of force, of any person's free exercise of religious beliefs, without regard to damage to religious real property.

(2) Both subsections establish as a jurisdictional prerequisite the requirement that, in committing the crime, the defendant either travel in interstate or foreign commerce or use a facility or instrumentality of foreign commerce. It is not sufficient that a facility or instrumentality of interstate or foreign commerce be used; such a facility must, in addition, be itself in interstate or foreign commerce. Subsection (a)(1) sets forth an additional jurisdictional prerequisite for a violation of that subsection only, namely, that the loss caused by the defacement, damage, or destruction exceed \$10,000.

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(3) It is important to observe that, on occasion, damage or defacement of religious property resulting in a loss of less than \$10,000 may not suffice to violate Subsection (a)(1) but nevertheless may violate Subsection (a)(2) (e.g., a synagogue spray-painted with anti-Semitic threats, not simply slurs or epithets, apparently directed at a particular person or group in order to intimidate them in the exercise of their religion).]

[44-1.8] Title 42, U.S. Code, Section 1973i - Voting Rights Act of 1965

Section 1973i provides that no person acting under color of law, shall fail or refuse to permit any person to vote who is entitled to vote, nor shall they willfully fail or refuse to give effect to such person's vote. This section also prohibits intimidation of or attempts to intimidate persons for voting or urging or aiding others to vote. Alleged violations of this statute having racial aspects are handled under the 44 classification. They are to be captioned, "Civil Rights - Voting Laws." Other alleged violations of Title 42, Section 1973 are handled under the 56 classification and are captioned "Election Laws."

[44-1.9] Title 42, U.S. Code, Section 1973dd - Overseas Citizens Voting Rights Act of 1975

This Act applies to all Federal elections held on or after January 1, 1976. It provides rights for citizens residing overseas to register and vote in the state where they were last domiciled. The Act relates to any Federal election, provided the voter meets all qualifications for voting in the state in which he/she was last domiciled.

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44-2 TIME UTILIZATION RECORDKEEPING (TURK) DESIGNATION IN 44-MATTERS

44-2.1 44A Investigations

Any allegation of a violation of Title 18, USC, §§ 241, 242, 243, 244, 245 and 246 involving the use of force and/or violence is to be handled as a 44A matter.

44-2.2 44B Investigations

Any allegation of a violation of Title 18, USC, §§ 241, 242, 243, 244, 245 and 246 which does not involve the use of force or violence is to be handled as a 44B matter.

44-2.3 44C Investigations

Any allegation of a violation of Title 42, USC, §§ 1973i or 1973dd is to be handled as a 44C matter.

44-3 HANDLING OF CIVIL RIGHTS COMPLAINTS - INITIATION OF CIVIL RIGHTS INVESTIGATIONS

44-3.1 Initiation of Civil Rights Investigation

The following circumstances represent examples of situations in which a civil rights investigation should be initiated:

(1) Upon receipt of a civil rights allegation from a complainant or victim not known to be unreliable.]

(2) Upon receipt of a written request from the Civil Rights Division (CRD), Department of Justice (DOJ), [which is transmitted via FBIHQ. The United States Attorney] (USA) does not have the authority to advise a field office to discontinue investigation specifically requested by the [DOJ.] Any questions regarding the deletion of any portion of a [DOJ] request must be promptly resolved with FBIHQ.]

(3) Upon receipt of a [request from a USA.] If the field office believes the USA's request is not warranted and cannot resolve this with the USA, [promptly] advise the Civil Rights Unit [(CRU), Criminal Investigative Division (CID), FBIHQ.

(4) Upon receipt of [specific] information [appearing in] the legitimate news media reporting [apparent violation(s) of civil rights statutes.]

(5) [Upon receipt of a civil rights complaint alleging a "Color of Law" violation (Title 18, USC, § 242) from any source not known to be unreliable. The FBI has investigative jurisdiction for any civil rights complaint against any Federal, state, or local law enforcement officials. Upon receipt of a Civil Rights complaint involving allegations against personnel of a Federal law enforcement agency, obtain initial facts of the complaint from complainant, victim or other original source and advise FBIHQ. Conduct no further investigation unless specifically instructed to do so by FBIHQ. The complaint will then be discussed by FBIHQ with the CRD, DOJ, for a determination as to whether the Department will request a criminal civil rights investigation by the FBI or whether the CRD, DOJ, will decline criminal prosecution in favor of an administrative inquiry. Civil Rights allegations against any Federal law enforcement agency official should be promptly brought to the attention of the CRU, FBIHQ. "Color of Law" can also apply to nonlaw

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enforcement officials who have lawful authority due to their position, such as mayor, councilman, tax collector, proprietor of a nursing home, security guard, etc., and who are likewise bound by laws, statutes, ordinances, regulations or customs. Law enforcement personnel are therefore only a few of the "officials" who act under color of law. "Color of Law" is further defined in Section 44-1.2.

(6) Upon receipt of a complaint involving civil rights allegations against FBI personnel, the following procedures are to be followed:

(a) Advise the CRU, CID, and the Office of Professional Responsibility (OPR), Inspection Division (INSD), by telephone, followed by appropriate communications so that FBIHQ may furnish appropriate guidance. The CRU will coordinate with OPR and other FBIHQ components and advise the SAC concerning the proper handling of the matter;

(b) If a civil rights complaint arises during an administrative inquiry, the pertinent administrative inquiry relating only to the civil rights allegation must stop in order to resolve any criminal violations. That portion of the administrative inquiry may not resume until authorized by FBIHQ.

(c) OPR, INSD, and CRU, CID, will coordinate the presentation of the facts of the allegations to OPR, DOJ, and the CRD, DOJ, to determine if a criminal investigation is warranted. If no criminal investigation is warranted, the matter will be administratively handled by OPR, INSD. If CRD, DOJ requests a criminal civil rights investigation, the CRU, FBIHQ, will advise the SAC to initiate an investigation which should be reported to FBIHQ pursuant to the existing provisions of this section of the manual unless advised to the contrary by FBIHQ.

44-3.2 Special Circumstances in Which Investigation May Not Be Required

The following circumstances, not all inclusive, represent examples of situations where investigation should not be initiated:

(1) Upon receipt of information involving mass demonstrations, such as riots, marches, parades, student demonstrations, and major confrontations between local law enforcement officers and groups of persons, immediately advise FBIHQ of the details pursuant to instructions set forth in Part I, Section 157 of this manual entitled "Civil Unrest." Furnish the Civil Rights Unit, FBIHQ with a copy of any "Civil Unrest" communications which contain information indicating possible civil rights interest.

(2) It is not necessary to initiate a civil rights investigation upon receipt of a letter from a Federal or state prison inmate unless specific criteria are met. Pursuant to an agreement between FBIHQ and DOJ, the following specific criteria have been established and must be met prior to initiation of a civil rights investigation based on an inmate letter alleging brutality:

(a) The complainant is the victim or someone with first-hand knowledge of the incident;

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(b) The complainant indicates the kind of injuries sustained as well as whether the injuries required medical treatment; and

(c) Names of witnesses provided.

These criteria do not include death cases and only apply to written complaints from inmates of Federal and state prisons. This policy does not apply to prison inmate letters from lesser facilities (i.e., city or county jails). If all of the above criteria are not satisfied, a letter should be directed to the writer requesting the necessary information. If the writer does not respond or the information furnished still does not meet the criteria, conduct no further investigation. The letter(s) should be indexed and filed in the field office 44-0 file, or a control file.

(3) Each field office is also authorized to place letters in an appropriate "0" or control file if the writer is obviously mentally deranged and makes no legitimate civil rights complaint, or if the writer makes no specific civil rights complaint. Letters which contain a questionable or borderline civil rights complaint should continue to be resolved by sending a letter to the writer requesting additional specific information. If the information thereafter does not indicate a civil rights violation, there is no need to forward the letter(s) to FBIHQ; however, they must be properly indexed and filed in the field office. Letters which allege a pattern of violations, or which are submitted by a legitimate civil rights organization but do not contain sufficient predicate information, should be referred to FBIHQ.]

44-4 INVESTIGATIVE PROCEDURE - 44A MATTERS - FORCE AND/OR VIOLENCE

44-4.1 [Initial Investigation]

(1) Interview the victim(s) and/or complainant(s) for full details of allegation(s). As a part of each interview, secure the identity of [subject(s) and] witness(s) to the incident. [Have victim execute a medical release form (FD-465)] if injuries sustained were treated by a physician or if victim required hospitalization. Advise victim that information furnished may be used in court of law. [See Section 44-10.6(9) regarding the need for signed statements.]

(2) Observe, describe, and photograph, in color, any complaint-related injuries visible on body(s) of victim(s) at the time of interview. If victim's wounds are bandaged, determine whether the bandages can be removed so that the victim's wounds can be photographed. If the bandages can safely be removed, photograph the unbandaged wounds. If the bandages cannot be safely removed, photograph the bandaged wounds. [Photographs made available from other sources may be used if the authenticity of the photographs can be established and used for court purposes.]

(3) At the outset of any Civil Rights investigation involving a possible "Color of Law" violation (Title 18, USC, § 242), the responsible head or appropriate official of the agency or institution involved is to be notified of the initiation of the investigation. This includes all local, state and Federal agencies and institutions. Do not furnish the identity of the complainant to [this] official or any person outside of the FBI or DOJ.

(4) Obtain copies of all police reports relevant to the incident under investigation [with the exception of Internal Affairs reports. Internal Affairs reports are only collected as part of a "Substantial Case" (see Section 44-4.2(4)) and are not collected as part of the "Initial Investigation." A cover FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of records are readable.

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Determine what criminal and judicial action has been taken or is contemplated by authorities against victim(s) and subject(s). Conduct appropriate criminal record checks for each victim and subject. An inquiry with the state computerized law enforcement system is normally sufficient. In death cases, obtain a copy of the report of the autopsy if conducted, or coroner's report. Do not delay completion of investigation awaiting these reports but show in your report what steps have been taken to obtain relevant records.

(5) Obtain copies of any medical records relating to treatment received by each victim for injuries allegedly sustained at the hands of subject(s). Some hospitals and doctors may require a release (FD-465) signed by victim or a subpoena before making records available. If a subpoena is necessary, obtain the name of the person for whom a subpoena duces tecum should be issued. An FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of these records are readable.

(6) Conduct field office indices search and set out information regarding other civil rights allegation(s) made against each subject. Also, conduct an indices search regarding victim(s) and summarize information contained in field office file(s).

At this point, a 44A case may be closed when, in the opinion of the SAC, the investigation establishes that the totality of the circumstances indicates that the case is not of a serious or substantial nature and therefore does not warrant further investigation. Furnish results of investigation to FBIHQ for transmittal to the DOJ. (See Section 44-5 for reporting guidelines.)]

[44-4.2 Additional Investigation Required - Substantial Case

If the case is determined to be serious and substantial in nature, conduct the following additional investigation:

(1) Interview each subject for full details of the incident. As a part of each interview, secure the identity of witnesses. Obtain a complete physical description and background for each subject during interview or from police records. (See Section 44-10.6(9) regarding the need for signed statements.)

(2) Interview all or a sufficient number of witnesses to fully develop the facts of the case. Identity of witnesses may be obtained from subject(s), victim(s), or police reports. Obtain and document the names and addresses of all witnesses who were not interviewed during the investigation. As a part of the interview with each witness, obtain full name, address, telephone number, employment, race, sex, date of birth and social security number. Advise witnesses that information furnished may be used in a court of law.

(3) Identify and interview all physicians and other medical and paramedical personnel who treated each victim for injuries allegedly sustained at the hands of subject(s), including the ambulance attendants who transported victim(s) to the hospital, the hospital admission clerks, orderlies, and the nurses involved in the treatment of victim(s). In the interviews with the doctors and other medical personnel also determine the following information: the severity of victim's injuries, whether victim's injuries could have been caused the way he/she or subject(s) claim, whether victim appeared intoxicated (especially if subject(s) claim the victim was), and whether victim was belligerent and/or unruly (especially if subject(s) claims he/she was). In death cases, interview the pathologist or medical examiner who performed the autopsy.

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(4) Contact appropriate officials at the subject officer's agency to obtain pertinent records, i.e., Internal Affairs Report, personnel file, etc., and any other complaint(s) against subject. It should be noted that the Supreme Court has held that a statement given by a public employee under an express threat of dismissal for failure to answer cannot constitutionally be used against the employee in a subsequent criminal proceeding (Garrity v. New Jersey, 385 US 493 (1967)). Furthermore, subsequent case law has held that the fruits of these statements are likewise not admissible. Accordingly, do not review any of these compelled subject statements but instead forward them to FBIHQ in a sealed envelope marked "potential Garrity statements enclosed." Upon receipt, CRU, FBIHQ will transmit the Garrity material to the DOJ where the report will be reviewed and any compelled subject statements will be removed before the entire investigative report is reviewed by the case Attorney at CRD, DOJ. The cover communication should also note that an Internal Affairs Report is enclosed and it may contain Garrity statements. If the subject officer consents to make such statements available, that fact should be recorded on an FD-302 and it should also be noted in the administrative section of the report.

(5) Where there are conflicts as to the facts, attempt to resolve same. For example, if there is a conflict in the sequence of events, inspect and copy records, such as police logs, tape-recorded radio transmissions, or hospital admission records, that would help resolve the conflict.

(6) Describe the scene of the incident; where appropriate, supplement description with photographs or a diagram.

(7) After completion of the investigation, advise the USA of the results and ask USA if further investigation is warranted. Regardless of the USA's answer, submit report of investigation completed. If USA requests further investigation, conduct whatever investigation USA requests as long as such requests are reasonable and pertinent to the case. If a problem arises with a request of this nature, handle pursuant to instructions set forth in 44-3.1(3) of this manual. The results of this investigation should be furnished in an investigative report supplementing the initial report. When the USA states that the investigation is adequate, request the USA to furnish an opinion as to the prosecutive merit of the matter. Do not delay the submission of any report pending a prosecutive opinion by the USA. USA's prosecutive opinion can be furnished in a supplementary report.]

[44-5 REPORTING GUIDELINES - 44A MATTERS

[44-5.1 [Submission] of FD-610

[[The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth under Section 44-10.1.

[44-5.2 Format of 44A Investigative Report

[(1) All investigative activity is to be reported utilizing the FD-263 cover page, the FD-204 synopsis page, FD-302s and investigative inserts. Do not use an LHM unless specifically authorized by FBIHQ. All investigative activity is to be completed and reported within 21 workdays of receipt of complaint. These cases are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agent(s).

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(2) Reports are to be organized in a logical progression. A Table of Contents should be utilized in order to assist review of the investigation by the case Agent, Field Supervisor, Civil Rights Unit, FBIHQ, and DOJ Attorneys. Civil Rights reports should be organized as follows:

(a) Complete the FD-263 and set forth the identity of the responsible head or appropriate official of the agency or institution involved who was advised of the initiation of a Civil Rights investigation under the Administrative Section of the form. Ensure date of this notification is included.

(b) Complete the FD-204 including a detailed synopsis which succinctly sets forth the investigative content of the report. Do not use phrases such as "interview set forth" or "details set forth" in the synopsis.

(c) Predication paragraph is to follow as the first item under "Details" of the report. The predication must contain a brief statement as to the basis for the case being opened.

(d) Interview(s) of victim(s) is to be set forth on an FD-302(s).

(e) Photographs of victim's injuries not submitted to FBIHQ for developing are to be made part of the report and should be handled as enclosures to the report. Observations relative to injuries, photographed or not photographed, are to be recorded on an FD-302.

(f) When necessary, a diagram of the scene where the incident occurred should be made a part of the report.

(g) Interview(s) of witness(s) is to be set forth on FD-302(s) or investigative insert(s). See also Section 44-10.6(9).

(h) Interview(s) of subject(s) is to be set forth on FD-302(s). See also Section 44-10.6(9).

(i) Police records of less than ten (10) pages are to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of police records in an FD-302 if they are not readable.

(j) Medical records of less than ten (10) pages are to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of medical records in an FD-302 if they are not readable.

(k) Interviews of medical personnel are to be set forth on FD-302s.

(l) Prior arrest records of subject(s) and/or victim(s) are to be made pages in the report and/or set forth on an investigative insert. The source(s) of these records and date obtained are to be set forth on an investigative insert.

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(m) Results of the field office file review; USA's opinion; SAC's authority to close the case; and list of subject(s) and victim(s) addresses are to be set forth on an investigative insert(s) which normally appears at the end of the report. With respect to the notification list, the CRD, DOJ has established a procedure by which subject law enforcement agency officers, victims and complainants are notified by letter of the DOJ's decision to close Civil Rights cases after reviewing FBI reports. To assist the DOJ in notifying subject(s), victim(s), and complainant(s), a list of the subject(s), victim(s), and complainant(s), along with addresses where they may be notified is to be clearly set forth on the last page of a report. If during the course of the investigation, the head or other appropriate official of the subject officer's department or agency specifically requests to be notified, that specific request should be noted in the details of your report on the last page. Clearly state that this official specifically desires departmental notification. Without this statement the DOJ will not advise the official. Set forth the name and title of the appropriate official and the address to which notification may be sent.

(n) Three copies of each report and three copies of report enclosures are to be submitted to FBIHQ. One copy of report and enclosures is to be forwarded to the USA.]

44-6 INVESTIGATIVE PROCEDURE - 44B MATTERS - NONBRUTALITY

(1) Interview complainant and/or victim(s) if readily available.
[Secure same information as set forth under[44-4.1(1)]during interview.

(2) Where appropriate to round out the investigation, check police records, office indices, court records, institution records and any other records pertinent to the case.

(3) Examples of nonbrutality allegations are as follows:

- (a) Unlawful arrest or detention
- (b) Unlawful search or seizure
- (c) Police harassment or abuse of power

(d) Failure of any public official to take official action. This involves cases in which a public official, who is a witness to, or cognizant of, a deprivation of civil rights of an individual, such as an assault upon that individual, fails to take appropriate action to protect that individual's person or rights.

(e) Deprivation of civil rights in connection with trial, conviction, or sentence. Includes allegations of improper extradition procedures.

(f) Deprivations relating to or growing out of treatment of incarcerated persons or concerning administration of prisons or jails.

(g) Alleged unlawful deprivation of property by purported action of any public agency. Involves cases relative to imposition of zoning restrictions on property, exercise of eminent domain without due process of law, and like situations.

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44-7 REPORTING OF INVESTIGATION - 44B MATTERS

44-7.1 Submission of FD-610

[The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth in Section 44-10.1.]

44-7.2 Format of 44B Investigative Report

(1) Any matter which contains extensive investigation is to be reported in the same manner as a 44A case. Instructions relating to 44A case reports are set forth under [44-5.2](1) and (2).

(2) All other investigation may be reported by LHM. The LHM must contain a comprehensive description of the investigation conducted. Any FD-302s, investigative inserts, and records of less than ten (10) pages should be appropriately designated as pages in the LHM. Large numbers (over 10 pages) of reproduced records are to be forwarded as enclosures to the LHM.

(3) When an LHM is submitted in a 44B matter, furnish FBIHQ with the original and two (2) copies of the LHM. Furnish local USA with one (1) copy of the LHM.

44-8 INVESTIGATIVE PROCEDURE - 44C MATTERS - VOTING LAWS

(1) Any allegation of a violation of Title 42, USC, § 1973i (Voting Rights Act of 1965) or § 1973dd (Overseas Citizens Voting Rights Act of 1975) involving the use of force or violence is to be investigated in the same manner as a 44A case.

(2) Any allegation of a violation of Title 42, USC, § 1973i (Voting Rights Act of 1965) or § 1973dd (Overseas Citizens Voting Rights Act of 1975) which does not involve the use of force or violence is to be investigated in the same manner as a 44B case.

(3) Agents are not to be assigned to "police" elections or act as observers at the polls. If a request is received for this type of activity, immediately advise the appropriate local and/or state officials, the USA, and FBIHQ of the receipt of the request. The board of election commissioners, all appropriate local law enforcement officials, the USA and FBIHQ are to be informed of any report received in regard to anticipated disturbances at the polls. The LHM or report submitted should show the notification to the outside agencies specifically identifying agency and official notified, as well as date and time notified.

(4) [DOJ] has advised that in order to fulfill its mandate, there may be instances where it would be most efficient and/or necessary for the FBI to perform related investigations in the vicinity of the open polls. Such requests, however, should be immediately brought to the attention of [CRU,] FBIHQ, and will be approved only on the instructions of the DOJ. Once approved, it must be realized that the potential for misunderstanding of the purpose of the FBI's inquiry(s) requires that every effort be made to limit the investigation to only what is absolutely necessary to meet the objective(s) identified by the DOJ. Agents will not enter the polls, or conduct any investigation inside any facility in which the polls are located.

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(5) Investigations conducted under Title 42, USC, § 1973i, (Voting Rights Act of 1965) are generally civil in nature. Therefore, unless the DOJ advises the investigation under Title 42 is criminal in nature, the FBI is required under the Privacy Act of 1974 to furnish each individual interviewed with a statement that describes certain provisions of the Privacy Act (set forth in Form FD-496). Form FD-496 should be the only Privacy Act form used in civil rights investigations. The FD-302 used to report results of these interviews should clearly state that the interviewee was furnished a copy of this statement. All other interviewees (third party sources), when feasible, should be apprised of the purpose for which the information is sought and how it will be used. See Part I, 190-7 of this manual for details regarding express promise of confidentiality made to a third party source.

44-9 REPORTING OF INVESTIGATION - 44C MATTERS

(1) 44C matters alleging use of force or violence are to be reported in the same manner as a 44A case.

(2) 44C matters which do not allege use of force or violence are to be reported in the same manner as a 44B case.

[44-10 ADMINISTRATIVE INSTRUCTIONS

[44-10.1 Submission of the FD-610

(1) The purpose of the FD-610 is to promptly provide FBIHQ with a complete set of pertinent facts for each civil rights case investigated by the FBI (Classifications 44, 50, 173, 177, 189, 204, and 214). "Purpose" and "Instructions" are also listed on the reverse side of the FD-610. Data contained on the form is entered directly into a computer which assists in a more effective, efficient, and economical management of the Civil Rights program by FBIHQ and the field. Field divisions may request that FBIHQ provide information/analysis based on data provided from the FD-610.

(2) Initial Submission. Instructions are set forth on the reverse of the FD-610. Upon receipt of a complaint or request for investigation which requires the initiation of a civil rights case, the initial FD-610 must be submitted within five (5) workdays. Every effort should be made to complete items (1-9) on the FD-610. If the complaint is received by an auxiliary office, the auxiliary office should obtain sufficient facts to submit the initial FD-610 to FBIHQ with two (2) copies also being sent to the office of origin.

(3) Supplemental Submission. Instructions are set forth on the reverse of the FD-610. A supplemental FD-610 should be submitted whenever the field office determines that additional information should be submitted to FBIHQ. This may include information which was not known previously, was previously omitted, or was previously incorrectly reported. When submitting a supplemental FD-610, provide data only for those items requiring a change.

(4) The following sets forth specific instructions regarding completion of items 1 through 9 of the FD-610:

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44-10.2 Deadlines

Investigations are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agents. Deadlines have been established primarily to limit the time period that an allegation against a police officer remains unresolved. Investigations are not to be conducted with local law enforcement officers and are to be independently conducted by the FBI. Investigations of all civil rights cases are to be reported to FBIHQ in accordance with the following deadlines:

(1) FD-610 - Upon receipt of a complaint, the receiving office must submit the FD-610 within five (5) workdays. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 still must be submitted within five (5) workdays of the receipt of the complaint.

(2) 44A - Substantial Case - Upon receipt of a complaint that initiates a 44A case, and the investigation has determined the matter is substantial, complete investigation and mail the report to FBIHQ within twenty-one (21) workdays. If the investigation cannot be completed and a "Closing" report mailed on or before the expiration of 21 workdays then mail an initial "Pending" report within the 21-workday deadline and follow with a final report within 21 workdays of the initial report. For further instructions regarding complex investigations, see the last paragraph in this section.

(3) 44A - Nonsubstantial Case - Upon receipt of a complaint that initiates a 44A case and investigation determined the matter was not substantial, submit completed investigation by report mailed within 21 workdays.

(4) Upon receipt of a complaint that initiates a 44B case, submit completed investigation by report/LHM mailed within 21 workdays.

(5) Upon receipt of a complaint that initiates a 44C case, submit completed investigation by report/LHM mailed within 21 workdays.

Initial deadlines are established utilizing the date of receipt of the complaint which should be noted on the FD-610. Deadlines for subsequent reports are based on the date of the previous communication. Under normal conditions, 44B and 44C matters should be completely resolved and reported within 21 workdays. In 44A cases, every effort should be made to complete the investigation and submit the report within 21 workdays. If the investigation is not completed within that time frame, a pending report should be submitted and contain at a minimum, the complainant and/or the victim interview(s), and the police incident report. In a case in which investigation will be extensive and cannot be completed and mailed within 21 workdays, the field office should advise FBIHQ of the investigative steps to be pursued and, UACB, the date the results will be furnished to FBIHQ.

44-10.3 Procedures when Local, State, or Federal Agencies are Investigating Same Incident

From time to time questions have arisen concerning the procedures to be followed by the FBI in conducting investigations of alleged violations of criminal Civil Rights statutes when local or state agencies are simultaneously conducting an investigation of the same incident. Departmental policy in such circumstances is as follows:

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(1) Upon receipt of information by the FBI sufficient to justify initiation of a Civil Rights investigation, an investigation should be conducted regardless of the fact that a local or state investigation of the same incident is also being conducted. If, during the course of the FBI's investigation, state or local criminal charges arising out of the incident are filed against the subject(s), the FBI's investigation should be suspended and the USA and FBIHQ should be notified of the nature of the criminal charges and the likely timetable for prosecution of such charges. In all other situations, the investigation should continue to completion.

(2) Exceptions to this procedure may be necessary on infrequent occasions. Authority should be sought from FBIHQ on such occasions before discontinuing the investigation in the absence of filing of state or local criminal charges against the subject(s).

44-10.4 Subpoena Matters

Upon receipt of a subpoena for Agent's testimony, production of material or disclosure of information pertaining to a pending or closed Civil Rights investigation, the following procedures must be followed:

(1) Promptly notify the USA for the district in which the demand arose. The USA is under obligation to immediately contact the Deputy Assistant Attorney General, CRD, DOJ, for referral to the appropriate Section Chief for review of the information for which disclosure is sought.

(2) Notify FBIHQ, Attention: Civil Rights Unit, Criminal Investigative Division, by appropriate communication (i.e., teletype, telephone, or airtel) of receipt of the subpoena, the results of your contact with the USA and all pertinent factors you believe appropriate for consideration in reaching a resolution to the demand. The above information will be forwarded to the CRD, DOJ for its final determination of action to be taken in response to the demand. CRD, DOJ will generally notify the concerned USA directly of its decision concerning the subpoena and advise FBIHQ of its instructions to the USA. FBIHQ will then advise the concerned field office of this information. The original and one copy of the airtel with three copies of the subpoena must be provided to FBIHQ.

(3) In all instances, keep FBIHQ advised of all developments concerning each subpoena.

(4) No release of information should be made without FBIHQ and DOJ authority.

44-10.5 Assignment of Special Agents to Civil Rights Investigations

Situations may dictate that certain FBI Agents not be assigned civil rights cases. Those situations are as follows:

(1) Special Agents who are former police officers, when the subject(s) is a law enforcement officer;

(2) Special Agents who have close relatives in the agency involved;

(3) Special Agents who have close working or personal relationship with the officers who are the subjects of a civil rights investigation;

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(4) Special Agents who have a close working relationship with the specific law enforcement agency involved and a question of propriety may be involved; and,

(5) Special Agents assigned to a Resident Agency who fall into categories (1), (2), (3), or (4). Resident Agents may conduct the initial interview of the victim(s) and/or complainant(s) and obtain records for any 44 case in their territory. Unless unusual circumstances exist, Resident Agents may be assigned to 44B and 44C cases involving agencies in their territory.

Special Agents falling into the above categories can be assigned to investigate all other matters within the Civil Rights program such as voting, housing and the Civil Rights Act of 1964. They can also assist in noninterview assignments in police misconduct cases by conducting police record checks, obtaining medical records, and/or court documents.

44-10.6 Miscellaneous

(1) Promptly advise FBIHQ of any imminent prosecution, criticism, controversy, or extensive publicity arising in connection with Civil Rights cases.

(2) If victim or complainant indicated he/she is in fear for his/her life or safety, ensure that the appropriate local authorities are advised without revealing the source of the complaint. This notification should be documented in the field office file and should be provided to FBIHQ only when a civil rights case is initiated.

(3) If victim(s) or witnesses are confined to hospitals or institutions and cannot be interviewed except in the presence of those charged with their custody, interviews should not be conducted and FBIHQ should be advised of such information.

(4) A subject, victim, or other witness may refuse to be interviewed except in the presence of his/her attorney. The SAC may authorize an interview of this nature if, in the opinion of the SAC, such an interview is necessary.

(5) Obtain FBIHQ authority prior to contacting a judge or a judicial officer in a civil or criminal action to determine disposition of a matter which may be pending before the court. Advise FBIHQ precisely why such information cannot be obtained from sources other than the court or judicial officer and furnish recommendation of SAC as to whether or not a particular judge should be interviewed. This information will be conveyed to the DOJ for review. Upon receipt of DOJ approval, the field division will be notified by FBIHQ. This course of action is necessary inasmuch as the CRD, DOJ, prosecutes the majority of civil rights cases and has supervisory responsibility for almost all criminal civil rights prosecutions. Therefore, the DOJ must be made aware of such contacts.

(6) In certain urgent situations the auxiliary office receiving a civil rights complaint should notify FBIHQ and the office of origin by teletype and/or telephone prior to submission of the FD-610. The auxiliary office should forward the victim/complainant interview, FD-302s, inserts, or other pertinent information to the office of origin within ten (10) workdays. If the investigation in the auxiliary office is extensive and such that the information cannot be furnished to the office of origin in ten workdays, mail

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the details of the original complaint (victim/complainant interview) within 10 workdays and mail the remainder within 21 workdays. In those instances where the office of origin has a civil rights case initiated by an auxiliary office, the office of origin should still mail a complete investigative report to FBIHQ within 21 workdays.

(7) No arrests are to be made or complaints filed without prior CRU, FBIHQ notification.

(8) When exhibits, including photographs, are obtained, furnish one copy to the USA and three copies to FBIHQ. Field offices should keep one copy of the exhibit for their files, including photograph negatives.

(9) Interviews of victims, subjects, and witnesses should be reduced to a signed statement only in the following instances:

(a) Upon specific instructions from FBIHQ.

(b) Upon specific request of USA.

(c) Upon specific request of DOJ.

(d) When deemed appropriate by the Special Agent during the course of the interview.

Interviews should be conducted even though a person declines to furnish a signed statement. If the interviewee is requested to provide a signed statement and declines, note this in the FD-302.

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PENALTIES

(1) Title 18, USC, § 241 - maximum of \$10,000 and/or not more than 10 years. If death results, any term of years or for life.

(2) Title 18, USC, § 242 - maximum of \$1,000 and/or not more than 1 year and if bodily injury results, fined and/or not more than 10 years. If death results, any term of years or for life.

(3) Title 18, USC, § 243 - maximum of \$5,000 fine.

(4) Title 18, USC, § 244 - maximum of \$500 fine.

(5) Title 18, USC, § 245 - maximum of \$1,000 and/or not more than 1 year. If bodily injury results, maximum of \$10,000 and/or not more than 10 years. If death results, any term of years or for life.

(6) Title 18, USC, § 246 - maximum of \$10,000 and/or not more than 1 year.

(7) Title 18, USC, § 247 - if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both; if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than 10 years, or both; and in any other case, a fine in accordance with this title and imprisonment for not more than 1 year or both.

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[(8) Title 42, USC, § 1973i - maximum of \$10,000 and/or not more than 5 years.

[(9) Title 42, USC, § 1973dd - maximum of \$5,000 and/or not more than 5 years.

44-12 CHARACTER - CIVIL RIGHTS: CIVIL RIGHTS - VOTING LAWS

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SECTION 36. MAIL FRAUD

36-1 STATUTE

Title 18, USC, Section 1341, frauds and swindles.

"Whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

EFFECTIVE: 06/26/91

36-1.1 Elements

- (1) A scheme devised or intended to be devised to defraud or for obtaining money or property by means of false pretenses.
- (2) The mails must be used in furtherance of such scheme.

EFFECTIVE: 06/26/91

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36-2 POLICY

(1) Inspection service of U.S. Postal Service is specifically charged with duty of investigating use of mails in furtherance of scheme or artifice to defraud.

(2) Complaints involving allegations of mail fraud only, with no allegation of violation over which Bureau has primary jurisdiction, should be referred to nearest postal inspector.

(3) During course of investigations of cases within the Bureau's primary investigative jurisdiction, evidence of violations of mail fraud statute may be disclosed. In such cases, the complete investigation of mail fraud statute may be disclosed. In such cases, the complete investigation of mail fraud angle shall be made by Bureau as part of regular investigation. Agents should be on alert for mail fraud violations in any kind of investigation.

EFFECTIVE: 06/26/91

36-3 CHARACTER - MAIL FRAUD

EFFECTIVE: 06/26/91

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SECTION 46. FRAUD AGAINST THE GOVERNMENT, ET AL.; RENEGOTIATION ACT -
CIVIL SUITS, ET AL.; FALSE CLAIMS - CIVIL SUITS

46-1 FRAUD STATUTES

Purpose - to protect the U.S. Government from any attempt to interfere with its lawful functions by deceit or dishonesty; not only where a pecuniary loss may be involved, but whenever the Government's functions are defeated by misrepresentations. The following are only the most commonly used statutes in prosecuting these crimes.

EFFECTIVE: 10/22/84

46-1.1 Conspiracy to Defraud, Title 18, USC, Section 286

Two or more persons, by agreement obtained, or aided in obtaining, payment from the U.S. Government through the submission of false claims.

EFFECTIVE: 10/22/84

46-1.2 False, Fictitious, or Fraudulent Claims, Title 18, USC,
Section 287

The elements are (1) to make or present a false claim against the U.S. Government while (2) knowing such claim to be false.

EFFECTIVE: 10/22/84

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46-1.3 False Statements, Title 18, USC, Section 1001

To knowingly and willfully falsify a material fact; or make a false, fictitious, or fraudulent statement; or make/use false writing or documents in any matter within the jurisdiction of the U.S. Government. [A false complaint given to the FBI, or any other Federal law enforcement agency, that initiates a criminal investigation resulting in the expenditure of time and resources, is a matter within the jurisdiction of the U.S. Government and a violation of this statute. A false statement in an application for Federal employment is also a violation of this statute. A false statement in an application for civilian employment violates this statute if the applicant knows or should reasonably foresee that the application will be submitted to a Federal Government agency for a security check. A false statement may be written or oral, sworn or unsworn. This statute does not apply to false statements made under oath before the grand jury or in a judicial proceeding. False statements made in an interview initiated by a Federal law enforcement agency, or by an employee in a noncriminal personnel matter may, in some instances, constitute a violation of Section 1001. See 46-1.8, Policy, (3), (4) and (6).]

EFFECTIVE: 10/22/84

46-1.4 Conspiracy to Commit Offense or Defraud the United States, Title 18, USC, Section 371

If two or more persons (1) conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and (2) one or more of such persons commit any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than 5 years or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. (For additional details see Part I, 62-16 of this manual.)

EFFECTIVE: 10/22/84

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46-1.4.1 Mail Fraud, Title 18, USC, Section 1341

The U.S. Postal Service is specifically charged with the duty of investigating use of the mails in furtherance of a scheme or artifice to defraud. The above notwithstanding, this statute, which carries penalties of a \$1,000 fine and/or 5 years' imprisonment, has been effectively used by the FBI in pursuing Fraud Against the Government (FAG) investigations and should be thoroughly familiar to Agents investigating such matters. The statute citation, key elements, and Bureau policy can be found in Part I, Section 36 of this manual captioned "Mail Fraud."

EFFECTIVE: 10/23/86

46-1.5 Other Fraud Statutes

It is noted that Congress, when approving legislation establishing various federally funded programs, incorporated into that legislation specific criminal statutes which are to be used in prosecuting frauds against such programs or thefts of program funds. When program fraud allegations are received, it will be necessary to determine from the administering agency the identity of specific fraud statutes, if any, which may have been created solely to aid in prosecutions relative to the affected program.

EFFECTIVE: 10/23/86

46-1.5.1 Theft or Bribery Concerning Programs Receiving Federal Funds, Title 18, USC, Section 666

When a state or local government or organization receives \$10,000 or more annually in Federal funds, it is unlawful (1) for an agent or employee to embezzle or misapply \$5,000 or more (2) for an agent or employee to accept a bribe in a matter involving \$5,000 or more or (3) for anyone to offer a bribe to an agent or employee.

EFFECTIVE: 10/23/86

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46-1.5.2 National Organ Transplant Act (NOTA); Prohibition of Organ Purchases (Title 42, USC, Section 274e)

(1) Section 274e, Prohibition of organ purchases, reads as follows:

"(a) Prohibition

"It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration or use in human transplantation if the transfer affects interstate commerce.

"(b) Penalties

"Any person who violates subsection (a) of this section shall be fined not more than \$50,000 or imprisoned not more than five years, or both.

"(c) Definitions

"For purposes of subsection (a) of this section:

"(1) The term 'human organ' means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.

"(2) The term 'valuable consideration' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

"(3) The term 'interstate commerce' has the meaning prescribed for it by section 321(b) of title 21."

(2) Violations of the above law should be opened in Bureau case classification 209 (Fraud Against the Government (FAG) - Health and Human Services (HHS)), and captioned in communications as "FAG-HHS-NOTA," with the addition of Fraud by Wire, Mail Fraud, or others, as appropriate.

(3) Reporting requirements for FAG cases should be

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adhered to in conducting these investigations.

EFFECTIVE: 10/23/86

46-1.5.3 Major Fraud Against the United States (Title 18, USC, Section 1031) (See Also Part I, Section 206 of This Manual)

(1) Prohibits anyone from execution or attempted execution of a scheme with intent:

"(1) to defraud the United States; or

"(2) obtain money or property from the United States by means of false or fraudulent pretenses, representations, or promises, in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of the contract, subcontract or any constituent part thereof for such property or services is \$1,000,000 or more, shall...be fined not more than \$1,000,000 or imprisoned not more than ten years, or both."

(2) Subsection B provides for a maximum fine of \$5,000,000 if the scheme involves a conscious or reckless risk of personal injury.

(3) Subsection F provides a statute of limitations of seven years.

EFFECTIVE: 02/20/90

46-1.6 Anti-Kickback Act of 1986, Title 41, USC, Sections 51-54

Prohibits any person, as defined in the statute, in all Government contracts from (1) providing or attempting or offering to provide any kickback to employees of a prime contractor, or higher tier subcontractor; or (2) soliciting, accepting, or attempting to accept any kickback for purposes of securing a Government contract or including amount of kickback in contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in contract price charged by a prime contractor to the U.S.

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EFFECTIVE: 02/20/90

46-1.7 FAG-Federal Lending and Insurance Agencies (FLIA)

Congress has passed legislation establishing a number of Federal lending and insurance agencies, some of which are independent agencies, while others operate within the framework of the U.S. Department of Agriculture (USDA) and the Department of Housing and Urban Development (HUD). These agencies engage in direct lending of Federal funds, and/or guarantee loans disbursed by private sector (banking/finance industry) sources. Certain agencies offer Federal lending insurance. The FBI's primary investigative jurisdiction regarding violations involving FLIA is limited to the following Federal agencies:

(1) Small Business Administration (Refer to Part I, Section 86 of this manual.)

(2) |Deleted|

(3) Federal Crop Insurance Corporation - a corporation within USDA.

(4) Federal Emergency Management Agency - this independent agency was chartered to enhance/coordinate emergency preparedness and response resources of the Federal, state and local governments with respect to the full range of emergencies - natural, man-made and nuclear.

EFFECTIVE: 12/23/93

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46-1.7.1 Fraud Statutes Pertaining to FLIA

- (1) Title 18, USC, Section 212. Prohibits offer of loan or gratuity to bank examiner.
- (2) Title 18, USC, Section 213. Prohibits acceptance of loan or gratuity by bank examiner.
- (3) Title 18, USC, Section 215. Prohibits receipt of commission or gifts or procuring loans.
- (4) Deleted
- (5) Title 18, USC, Section 217. Prohibits acceptance of consideration for adjustment of farm indebtedness.
- (6) Title 18, USC, Section 657. Prohibits embezzling, abstracting, or misapplying funds, securities, etc., by officers, agents, employees, or receivers of lending, credit, and insurance institutions.
- (7) Title 18, USC, Section 658. Prohibits concealment, removal, disposal, or conversion to personal use of property mortgaged or pledged to farm credit agencies.
- (8) Title 18, USC, Section 1006. Prohibits false entries in Federal credit institution books, reports, and statements.
- (9) Title 18, USC, Section 1011. Prohibits false statements and overvaluing of land in Federal land bank mortgage transactions.
- (10) Title 18, USC, Section 1013. Prohibits making false pretenses or representations in connection with farm loan bonds and credit bank debentures.
- (11) Title 18, USC, Section 1014. Prohibits falsification of loan applications submitted to certain FLIA. (Refer to statute.)
- (12) Title 18, USC, Section 1907. Prohibits disclosure of information by farm credit examiner.
- (13) Title 18, USC, Section 1908. Prohibits disclosure of information by national agricultural credit examiner.
- (14) Title 18, USC, Section 1909. Prohibits performance

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of services for compensation by examiners.

EFFECTIVE: 02/20/90

46-1.8 Policy

(1) Except to the extent that investigations involve allegations of corruption on the part of U.S. Government employee(s), which require a greater degree of administrative scrutiny and more expeditious reporting, other policy and investigative guidelines appearing in this ("46") section of the manual pertain to all FAG violations.

(2) FAG cases must be given prompt and continuous attention. The level of manpower devoted to, and the priority placed upon completion of these investigations should be governed by the circumstances of each case in relation to the entire case load. There is a heightened necessity to promptly resolve those allegations pending against Federal employees due to the fact that the affected Federal agency may delay, or otherwise coordinate, administrative action contemplated against their (subject) employees, with receipt of the results of the completed criminal investigation.

(3) All FAG allegations which serve as predication for opening an investigation must be discussed with the U.S. Attorney early in the investigation. Should the USA concur in the initiation of an investigation, this PRELIMINARY PROSECUTIVE OPINION should cite the applicable statute(s) which applies to the alleged violation, AND a commitment to pursue prosecution should the allegations be substantiated through investigation. If the initial complaint/allegation is not sufficiently specific to enable the Agent to hold an informative discussion with the USA, conduct appropriate investigation to "round out" the allegation such that an adequately detailed discussion may be held. (It should not be necessary for the USA to request such investigation.) Regardless of whether the USA expresses a willingness to prosecute, or declines prosecution out of hand, the opinion (and all AUSA opinions) should be confirmed in writing. The initial 30-day LHM, or closing LHM in the event of a prosecutive declination, is sufficient for this purpose. (See MIOG, Part I, 46-1.3, & 46-1.12(2).)

(4) With regard to referrals wherein the victim Government agency has conducted significant investigation in efforts to determine whether or not a Federal violation has been committed,

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consideration should be given to having the agency investigator present during the preliminary discussions of the case with the USA. Much of the background can then be explained by the agency investigator, thereby minimizing needless duplication of effort.
|(See (6).)|

(5) Pay close attention to SPECIFIC TITLES of Federal, state and local agencies involved (defrauded) in FAG cases, as frequently there exist confusing similarities among such agency or program titles. Failure to properly identify the agency involved may lead to a misunderstanding of the facts. In those instances where a state or local agency which receives PARTIAL FEDERAL FUNDING has been defrauded, a Federal violation MAY have occurred. The COMINGLING of Federal and state (or local) funds should not ordinarily in and of itself be a bar to Federal prosecution. Consideration should be given to advising FBIHQ of those instances wherein comingling of funds is indicated as the reason behind a declination of prosecution. Under appropriate circumstances, FBIHQ will discuss such decisions with the Department of Justice.

(6) Complaints/allegations concerning FLIA and other FAG violations (a) which through legislation or through mutual agreement are not within the FBI's primary investigative jurisdiction or (b) which cannot be afforded adequate investigative attention due to manpower constraints within division and/or the failure of the allegation to "measure up" to prosecutive guidelines of the USA, should be referred to the appropriate local or regional office of the Inspector General for the affected Federal agency. Where no such local or regional office exists, forward the matter to FBIHQ with a request that the matter be referred to the national headquarters of the appropriate agency. (For example, violations relating to Farmers Home Administration matters are investigated by the Office of Inspector General, Department of Agriculture. The FBI does, however, investigate violations which indicate criminal misconduct on the part of USDA employees.) |(See MIOG, Part I, 46-1.3.)|

SPECIAL NOTE: In all instances wherein investigative matters are referred by a field division to another Federal agency BASED UPON MANPOWER CONSTRAINTS, FBIHQ must be advised by LHM; the cover communication should clearly state that pending investigative matters being addressed by the field division are of greater significance than the item of referral. A copy of each such referral should be routed to a special field office file entitled "Fraud Against the Government Matters-Referrals to other Agencies." Ensure proper indexing of such referrals.

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(7) FBIHQ should be promptly notified, by telephone and/or teletype, of the initiation of MAJOR or OTHERWISE SIGNIFICANT FAG cases which may prompt news media (or other) inquiries to be directed to FBIHQ.

(8) Promptly report significant investigative/prosecutive developments to FBIHQ in a form suitable for dissemination to the appropriate Government agency, as that agency may have deferred administrative or civil action regarding contracts, contract negotiations, loan or loan guarantees, etc., pending the outcome of the criminal investigation.

(9) FAG investigations which fail to disclose evidence that a Federal violation has been committed may be "closed" without consultation with the USA, provided all logical investigation has been completed. Prosecutive declinations should include the underlying reason for same (e.g., "no Federal violation substantiated through investigation," "lack of prosecutive merit due to (explanation)," etc.). The PROSECUTIVE DECLINATION of the USA should be confirmed by means of the closing LHM.

EFFECTIVE: 09/16/94

46-1.9 Investigative Procedure

(1) Determine the identity of the governmental agency and agency program (source of funds) which has been defrauded. Based upon the complaint or allegation, ascertain the specific title and section of Federal law which may have been violated. (The "United States Government Manual" is an invaluable guide to understanding departments, independent establishments and Government corporations of the Executive Branch of the Federal Government, as well as the departments and offices of the Legislative and Judicial Branches. All field divisions are issued a copy of this yearly manual.)

(2) Identify those governmental officials having administrative responsibility for the victim agency and/or program. Ascertain which agency procedures have been misapplied or subverted in furtherance of the alleged FAG violations. Take note of any agency practices or procedures, formal or informal, which may adversely affect the investigation and/or future prosecutive action. Be certain to bring such items to the attention of the prosecuting attorney.

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Determine in advance the substance of testimony which Government officials will provide if called upon during trial.

(3) Identify the subject(s) and verify the means by which the subject(s) is alleged to have defrauded the Government.

(4) Identify and obtain any false or fraudulent documentary evidence which will prove the existence of a violation.

(5) Gather evidence of willful intent on the part of the subject(s). Be mindful to obtain/ascertain:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(6) Special Agents of the FBI are empowered to take signed statements, under oath from witnesses and subjects in those investigations where a Government employee is implicated in criminal misconduct or irregularity, and in those investigations of fraud on, or attempts to defraud, the United States Government. Consideration should be given to obtaining such statements in those instances where such a form of evidence will tend to strengthen the findings of an investigation. It is recognized that this is a judgmental decision, requiring the thoughtful consideration of the experienced investigator. Legal/Evidentiary ramifications of such statements may warrant consultation with the division's principal legal advisor or with the prosecuting attorney associated with the investigation. (Statutory authority for placing witnesses and subjects under oath is contained in Title 5, USC, Section 303.)

(7) Complex FAG cases frequently demand that a close working relationship be maintained with the USA's Office in order to assure that the case "develops" at a pace that will facilitate the prosecutor's comprehension of the complexities of the matter and therefore lend to a timely prosecution of the violation(s). Keep alert to avoid unnecessary investigation. Consideration should be given to the utilization of manpower from other Government agencies to review (audit/examine) their in-house records when such a review does not threaten the integrity of the investigation.

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EFFECTIVE: 03/28/84

46-1.10 Venue

(1) False claim or document - Judicial district where the false document was submitted to or received by the Government.

(2) Oral false statement or the concealment of a material fact(s) - Judicial district where the false statement was uttered or where the concealment occurred.

EFFECTIVE: 02/20/90

46-1.11 Fraud Against the Government - Security Aspect

There are special provisions in this manual, in addition to those contained within this section, with respect to FAG violations which have a "security" aspect. These may be found in other FBI investigations; e.g., Applicant investigations, Security of Government Employee investigations, Domestic Security investigations concerning individuals, and investigations of Atomic Energy Act violations. Appropriate special considerations contained within this manual (as indicated below) should be reviewed prior to the initiation of certain investigations, as follows:

(1) Applicant and Employee Investigations Conducted for Other Government Agencies - General Instructions: See Part II, Section 17, of this manual;

(2) Atomic Energy Act of 1954 - Criminal Violations: See Part I, Section 117, of this manual;

(3) Security of Government Employees: See Part I, Section 140, of this manual.

EFFECTIVE: 02/20/90

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46-1.12 Reporting Requirements

(1) The Department of Justice has designed and implemented the Fraud and Corruption Tracking (FACT) System in order to garner and centrally locate (through automated data processing) certain governmental fraud and corruption CASE INFORMATION in order to enhance the Federal Government's efforts to combat fraud, waste, abuse and corruption. The FACT System is limited solely to (Federal) governmental fraud and/or corruption cases handled by the FBI, the Inspectors General or both. Preprinted, uniquely prenumbered FACT forms must be completed at the INITIATION, and amended at the TRANSFER and/or DISPOSITION stage, of ALL FAG and Corruption of Federal Public Officials investigations which are NOT immediately declined during preliminary consultation with the appropriate prosecutor. Proper completion of FACT forms may be effected through the exercise of due care and with a working knowledge of the Department of Justice "FRAUD AND CORRUPTION TRACKING INSTRUCTION MANUAL," which is maintained in field office. ALL FACT forms newly completed or amended should be each collected during the month and forwarded to FBIHQ, by cover airtel captioned, "DEPARTMENT OF JUSTICE (DOJ), FRAUD AND CORRUPTION TRACKING (FACT) SYSTEM," on the first workday of the following month. SPECIAL NOTE: In genuinely sensitive investigations (e.g., undercover operations and high profile, ongoing Corruption of Federal Public Officials investigations) FACT forms must be completed on a timely basis. However, submissions to FBIHQ may be delayed until such time as the sensitive circumstances no longer exist, PROVIDED this fact is made known to FBIHQ in an "Administrative" section of the monthly FACT airtel, SUPRA.

(2) Submit a letterhead memorandum (LHM) (original and four copies) within 30 days of receipt of a FAG complaint/allegation. The LHM should be suitable for dissemination to (a) the Department of Justice, (b) the Office of Personnel Management (in those instances where a Federal employee is the SUBJECT of the investigation), and (c) the Federal agency(s) affected by the allegation/investigation. The initial LHM should, at a minimum, detail the predication for opening the investigation, summarize the investigation conducted in order to "round out" the allegation(s) and reflect the preliminary prosecutive opinion obtained (see 46-1.8(3) above). Be CERTAIN to DATE the receipt of the complaint and ALL other significant events.

(3) The LHM is the main vehicle utilized for conveying notification of the initiation, status and disposition of FBI investigations to affected Federal agencies, as well as the Department of Justice. Inclusion of Rule 6(e) (Federal grand jury source) material in an LHM will most often preclude dissemination of that

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communication outside of the Department of Justice. Thus, Rule 6(e) material should be excluded from LHM's, absent a Federal court order authorizing access to other interested parties/agencies. The LHM is NOT to serve as a prosecutive or investigative report.

(4) Federal agencies (Offices of Inspector General) have a statutory right to be informed of the existence of investigations affecting their agencies. Requests for withholding dissemination indicated in (2) above must be SUBSTANTIAL and documented in the "Administrative" section of the cover airtel.

(5) The decision regarding preparation of a "prosecutive report" is left to the discretion of the SAC/Field Supervisor and should be considered on a case-by-case basis. The complexity of the investigation and needs of the prosecuting attorney may be determining factors in this decision. USAs' requests for prosecutive reports should be honored in all instances. Prosecutive reports are not routinely disseminated outside of the Department of Justice.

(6) Preparation of interim, advisory LHM's MAY be warranted in certain high profile investigations or in those investigations which are being followed closely by the affected Federal agency.

(7) TITLE CHANGES should be noted in the opening paragraph of LHM's, in order to assist recipients (Offices of Inspector General, etc.) in referencing prior LHM's or correspondence regarding the investigative subject. Other identifiers, agency "titles" or file numbers when known, should be included in LHM's to assist in referencing other agency files.

(8) In those investigations where the USA declines prosecution AND the subject is a Federal employee, obtain a specific comment from the USA as to the merits of administrative and/or civil remedies against the Federal employee who is the subject of the case in which prosecution is being declined. Ensure the specific comments are confirmed in writing. The comment must be included in the closing LHM. If the USA advises no merit exists, so state. If the USA advised merit does exist, a statement such as "the foregoing declination is made due to the matter not meeting the standards required for Federal prosecution by the USA. It should not be construed by your agency, or by other affected agencies, in such a way as to preclude the initiation of such administrative and/or civil remedies as may be appropriate" is suitable.

(9) |Deleted|

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(10) A CLOSING LHM must be prepared for each investigation which has been concluded. This final LHM MUST restate the predication for opening the investigation, summarize investigative findings and detail the disposition of the investigation. Prosecutive action should be DETAILED from indictment, information or complaint, through plea acceptance, trial disposition and/or sentencing, as appropriate. Ensure that a FULL DESCRIPTION of the subject(s) is included in this communication. Again, be certain to DATE all significant events. In 209A matters involving health care providers, one copy of pertinent FD-302s which do not contain grand jury information protected pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure or information that would jeopardize an informant or confidential witness should be sent to FBIHQ for dissemination to the Department of Health and Human Services-Office of the Inspector General (HHS-OIG). The FD-302s should be attached to one copy of the LHM and listed as enclosures for dissemination to HHS-OIG. The FD-302s should be listed by date and name on the cover airtel. This could assist the HHS-OIG to recover funds pursuant to the Civil Monetary Penalties Law of 1981. This law can be found at Section 1128A of the Social Security Act or at Title 42, USC, Section 1320-7a. It authorizes the HHS-OIG to impose civil monetary penalties on health care providers who have defrauded HHS. The HHS-OIG will report these recoveries to FBIHQ. FBIHQ will thereafter notify the office of origin, or in accordance with the Manual of Administrative Operations and Procedures, Part II, 3-5.2.7, (2) (b), "Joint Investigation Recoveries," a recovery may be claimed by the appropriate field division.

(11) SPECIAL NOTE: Every effort should be made to furnish the victim Federal agency with constructive criticism concerning weaknesses within the agency's procedures or internal controls which may predispose the agency to fraudulent practices or limit the agency's ability to uncover fraudulent acts after the fact. Such observations on the part of the investigating Special Agent are valuable, and the inclusion of same within the closing LHM (or a separate LHM, if appropriate) is to be encouraged in all instances.

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46-1.13 Penalties (Maximum)

- (1) Title 18, USC, Section 286 - \$10,000 and/or 10 years
- (2) Title 18, USC, Section 287 - \$10,000 and/or 5 years
- (3) Title 18, USC, Section 371 - \$10,000 and/or 5 years
for felony; if misdemeanor, no more than penalty for misdemeanor
- (4) Title 41, USC, Sections 51-54 - A fine in accordance
with Title 18, Section 3571 ET SEQ. (a fine of not more than \$250,000)
and/or 10 years.
- (5) Title 18, USC, Sections 212 & 213 - \$5,000 and/or 1
year and fined a further sum equal to money loaned or gratuity given
- (6) Title 18, USC, Section 215 - \$5,000 and/or 5 years,
if amount involved does not exceed \$100, then \$1,000 and/or 1 year.
- (7) Title 18, USC, Section 217 - \$1,000 and/or 1 year
- (8) Title 18, USC, Sections 657 & 658 - \$5,000 and/or 5
years, if amount involved does not exceed \$100, then \$1,000 and/or 1
year
- (9) Title 18, USC, Section 666 - \$100,000 and/or 10 years
- (10) Title 18, USC, Section 1001 - \$10,000 and/or 5 years
- (11) Title 18, USC, Section 1006 - \$1,000,000 and/or 20
years
- (12) Title 18, USC, Section 1011 - \$5,000 and/or 1 year
- (13) Title 18, USC, Section 1013 - \$5,000 and/or 1 year
- (14) Title 18, USC, Section 1014 - \$1,000,000 and/or 20
years
- (15) Title 18, USC, Sections 1907-1909 - \$5,000 and/or 1
year
- (16) Title 42, USC, Section 274e - \$50,000 and/or 5 years
- (17) Title 18, USC, Section 1031 - \$1,000,000 and/or ten
years (\$5,000,000 if conscious or reckless endangerment)

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EFFECTIVE: 02/20/90

46-1.14 Character (See MAOP, Part II, 3-1.1 & 3-1.2; MIOG, Introduction, 2-1.5.3; Part I, 206-6 & 207-2.)

(1) With the exception of 209 cases, Fraud Against the Government - followed by (a) the name of the Federal department or agency concerned and (b) (Identity of the program or activity where fraud occurred).

(2) Unique classification numbers have been assigned to FAG cases pertaining to certain major Government agencies. Instructions for these classifications are the SAME as contained within this section. The "46" classification will be used for all FAG cases involving Government agencies not specifically identified below (NOTE: BE CERTAIN to include the appropriate ALPHA DESIGNATION within the classification "number." Refer to the substantive section of this manual for the distinction between such alpha components of the classification "number.")

17 A&B FAG - Department of Veterans Affairs (VA)

46 A&B FAG - Agency involved

86 A&B FAG - Small Business Administration (SBA)

147 A&B FAG - Department of Housing and Urban
Development (HUD)

206 A&B FAG - Department of Defense (DOD) - Appropriate
Branch of Military

206 C&D FAG - Department of Agriculture (USDA)

206 E&F FAG - Department of Commerce (DOC)

206 I&J FAG - Department of Interior (DOI)

207 A&B FAG - Environmental Protection Agency (EPA)

207 C&D FAG - National Aeronautics and Space
Administration (NASA)

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- 207 E&F FAG - Department of Energy (DOE)
- 207 G&H FAG - Department of Transportation (DOT)
- 208 A&B FAG - General Services Administration (GSA)
- 209 A&B Health Care Fraud
- 210 A&B FAG - Department of Labor (DOL)
- 213 A&B FAG - Department of Education (DOED)

EFFECTIVE: 12/23/93

46-2 RENEGOTIATION ACT - CIVIL SUITS

EFFECTIVE: 01/31/78

46-2.1 Background

(1) The Bureau conducts investigation in Renegotiation Act (Civil) suits brought under the Renegotiation Act of 1951 - Title 50, USC, App., Section 1211 et seq.

(2) The Renegotiation Act of 1951, in general, provides that Renegotiation Board is to review the total profit derived by a contractor during a year from all of his renegotiable contracts and subcontracts in order to determine whether or not this profit is excessive. The Board is empowered to eliminate those profits, found to be excessive in accordance with certain statutory factors. Thus, renegotiation is determined with respect to all receipts or accruals from renegotiable contracts and subcontracts of a contractor during a year.

(3) The renegotiation process allows an after-the-fact review of the profits on renegotiable contracts and subcontracts relating to the national defense and space contracts and related subcontracts. This is a renegotiation of a contractor's fiscal-year aggregate profits on these contracts; thus, it is completely different from price adjustments or redeterminations with respect to individual contracts.

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(4) Petitions for redeterminations of excessive profits determined by the Renegotiation Board are filed with the U. S. Court of Claims. The Court of Claims has exclusive jurisdiction to determine the amount of excessive profits received or accrued by a contractor or subcontractor in these cases. The Court of Claims may determine that the amount of excessive profits is less than, equal to, or greater than the amount determined by the Board.

(5) The proceeding in the Court of Claims is not a proceeding to review the determination of the Renegotiation Board, but is a de novo proceeding. The decision of the Court of Claims is subject to review only by the Supreme Court upon certiorari in the manner provided in the United States Code for the review of other cases in the Court of Claims.

EFFECTIVE: 01/31/78

46-2.2 Policy

(1) Investigations are requested by Assistant Attorney General in charge of the Civil Division.

(2) These requests, which contain detailed instructions as to what is desired, usually are accompanied by the renegotiation file and certified copies of all pertinent tax returns and a memorandum entitled, "General Instructions to the Auditor," which are forwarded to assist the Agent in the accounting investigation.

EFFECTIVE: 01/31/78

46-2.3 Investigative Procedure

(1) These investigations are of a civil nature resulting from actions filed by contractors against the U. S. Government in the Court of Claims. These suits pertain to instances where unilateral determination has been made by Government as to the amount of excessive profits realized by the contractor under renegotiation.

(2) In usual cases, all negotiations between plaintiff and Renegotiation Board are based on unverified accounting submissions supplied by plaintiff. It is imperative that a thorough audit be

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made, and all accounting data be verified or reasons given as to why it could not be verified.

EFFECTIVE: 01/31/78

46-2.3.1 Renegotiable v. Nonrenegotiable Sales

(1) Government is primarily concerned with profits made on plaintiff's renegotiable business. Unless total sales are broken down between renegotiable and nonrenegotiable sales, no determination can be made as to amount of excessive profits earned by plaintiff for year under review. Experience has indicated it is often difficult to classify some portion of plaintiff's sales; therefore, investigating Agent must make some decision in this respect. Various methods of arriving at this decision can be suggested and a few are set out below.

(a) What is opinion of company officials and accountants, including outside auditors who may have prepared plaintiff's renegotiation reports and forms?

(b) Were companies to whom the sales were made renegotiated and, if so, what percentage of renegotiable business was arrived at in these cases?

(c) If it is necessary to obtain this information from other sources, leads should be set forth for appropriate offices. Do purchase orders or other records relating to purchase of materials used in construction of items sold show this material was obtained for defense or space contracts and related subcontracts?

(2) Examination should be made of cost records to determine whether direct and indirect costs are properly attributed to renegotiable and nonrenegotiable sales. Basis for plaintiff's allocation of overhead and other indirect costs should be commented on. If any costs are improperly attributed, adjustments and reasons therefore should be clearly indicated. There is no objection to discussing the determination of these sales and related costs with company officials. Should company's stand as to this determination be unreasonable, Agent should point out his reason for believing the stand unreasonable but should not enter into any controversy with officials or their counsel. Agent should, at all times, be in position to support his contention when appropriate time arrives.

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EFFECTIVE: 01/31/78

46-2.3.2 Foreign Contracts

The 1951 act provided Renegotiation Board may specifically enumerate contracts to be exempted from renegotiation. Any sales so exempted should be listed separately.

EFFECTIVE: 01/31/78

46-2.3.3 Profit and Loss Statements

(1) The profit and loss statement should be comparative statement separated as to renegotiable and nonrenegotiable business, setting forth in adjoining columns the accounting data obtained from the plaintiff's submission, the defendant's audit and the differences. A breakdown should be shown as to total business, renegotiable business and nonrenegotiable business; for the plaintiff, the defendant, and the differences. All differences from one column to another should be explained. Where difference is appreciable, account where difference occurs should be analyzed to explain this difference. Comments should be made on accounting theories applied by plaintiff in reallocation of items of income and expense. It is only necessary to submit summary schedules. Auxiliary schedules will be contained in Agent's work papers. The report should emphasize discussion of discrepancies.

EFFECTIVE: 10/16/90

46-2.3.4 Prior Years

The memorandum from the Civil Division will request balance sheets and profit and loss statements for certain years prior to the year for which the plaintiff was renegotiated. Usually it is also requested that comparative statements for this prior period be prepared. The prior period serves as a guide in determining what percentage of profit the plaintiff should be allowed in the renegotiable year under review.

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46-2.3.5 Accounting Working Papers

Copies of all accounting working papers and schedules prepared should be made and forwarded to FBIHQ as an enclosure to the accounting report for transmittal to Civil Division. When a closing report is received from Washington|Metropolitan|Field Office original working papers should then be forwarded to FBIHQ by cover LHM for transmittal to Civil Division for completion of their file.

EFFECTIVE: 10/16/90

46-2.3.6 Office of Origin

FBIHQ will designate office of origin. The office of origin, upon completion of its investigation, is to submit a letter to FBIHQ with a copy to the Washington|Metropolitan|Field Office requesting that the Washington|Metropolitan|Field Office be designated office of origin and instructing the Washington|Metropolitan|Field Office to follow the|Claims Court|docket until a final decision has been rendered. Included in the letter should be a brief background of the case and the amount involved in the suit. It is not necessary to furnish Washington|Metropolitan|Field|Office|copies of all reports upon being designated origin inasmuch as these reports serve no useful purpose. All cases are to be followed by Washington|Metropolitan|Field Office until a decision is rendered by the court.

EFFECTIVE: 10/16/90

46-2.4 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about|himself/herself| or|his/her|own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby

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classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, 190-7.

EFFECTIVE: 10/16/90

46-2.5 Character - Renegotiation Act - Civil Suits

EFFECTIVE: 10/16/90

46-3 FALSE CLAIMS - CIVIL SUITS

EFFECTIVE: 01/31/78

46-3.1 Statutes

Title 31, USC, Section 231; Title 41, USC, Section 119;
Title 40, USC, Section 489

EFFECTIVE: 01/31/78

46-3.2 Section 231

EFFECTIVE: 01/31/78

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46-3.2.1 Elements

- (1) Person liable to suit must be civilian.
- (2) Claim is present.
- (3) Claim involved must be upon or against U. S. Government or any department or officer thereof. (In conspiracies to defraud U. S., there is no requirement that claim, payment, or allowance of which conspiracy seeks to achieve, be upon or against U.S.)
- (4) Claim must be false, fraudulent or fictitious. (If claim itself is not fraudulent, enumerated documents used to aid in obtaining payment of claim against U. S. must contain fraudulent or fictitious statement or entry.)
- (5) Person liable to suit had knowledge of false, fraudulent or fictitious character of claim or supporting documents.

EFFECTIVE: 01/31/78

46-3.2.2 Liability of Persons Making False Claims, Section 231, States That

"Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or

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other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall forfeit and pay to the United States the sum of \$2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

EFFECTIVE: 01/31/78

46-3.3 Section 119

EFFECTIVE: 01/31/78

46-3.3.1 Elements

- (1) Any person is liable to suit.
- (2) Claim is present.
- (3) Claim is presented, or caused to be presented, to any officer agent or employee of any U.S. Government agency.
- (4) Claim is false, fraudulent or fictitious.
- (5) Person or persons, for purpose of benefiting any person in connection with contract procurement, performance, negotiation, cancelation or termination have knowledge of false, fraudulent or fictitious statements or entry; or endeavor to cover up or conceal a material fact; or use or engage in any other fraudulent

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trick, scheme, or device.

EFFECTIVE: 01/31/78

46-3.3.2 Liability of Persons Making False Claims Under Contract
Settlement Act. Section 119 States That

"Every person who makes or causes to be made, or presents or causes to be presented to any officer, agent, or employee of any Government agency any claim, bill, receipt, voucher, statement, account, certificate, affidavit, or deposition, knowing the same to be false, fraudulent, or fictitious or knowing the same to contain or to be based on any false, fraudulent, or fictitious statement or entry, or who shall cover up or conceal any material fact, or who shall use or engage in any other fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any benefit, payment, compensation allowance, loan, advance, or emolument from the United States or any Government agency in connection with the termination, cancelation, settlement, payment, negotiation, renegotiation, performance, procurement, or award of a contract with the United States or with any other person and every person who enters into an agreement, combination, or conspiracy so to do, (1) shall pay to the United States an amount equal to 25 per centum of any amount hereby sought to be wrongfully secured or obtained but not actually received, and (2) shall forfeit and refund any such benefit, payment, compensation, allowance, loan, advance, and emolument received as a result thereof and (3) shall in addition pay to the United States the sum of \$2,000 for each such act, and double the amount of any damage which the United States may have "sustained by reason thereof, together with the costs of suit."

EFFECTIVE: 01/31/78

46-3.4 Section 489

EFFECTIVE: 01/31/78

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46-3.4.1 Elements

- (1) Any person is liable to suit.
- (2) Person has participated in fraudulent trick, scheme, or device.
- (3) The fraudulent trick, scheme, or device is for purpose of obtaining some payment, property or other benefit from U.S. Government or any U. S. Government agency in connection with procurement, transfer or disposition of U. S. Government property.

EFFECTIVE: 01/31/78

46-3.4.2 Liability under Federal Property and Administrative Services Act of 1949. Section 489 States That,

"...Every person who shall use or engage in, or cause to be used or engaged in, or enter into an agreement, combination, or conspiracy to use or engage in or to cause to be used or engaged in, any fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any payment, property, or other benefits from the United States or any Federal agency in connection with the procurement, transfer, or disposition of property under this chapter, chapter 11B of Title 5, chapter 4 of Title 41, and chapter 11 of Title 44--

"(a) shall pay to the United States the sum of \$2,000 for each such act, and double the amount of any damage which the United States may have sustained by reason thereof, together with the cost of suit; or

"(b) shall, if the United States shall so elect, pay to the United States, as liquidated damages, a sum equal to twice the consideration agreed to be given by the United States or any Federal agency to such person or by such person to the United States or any Federal agency, as the case may be; or

"(c) shall, if the United States shall so elect, restore to the United States the money or property thus secured and obtained and the United States shall retain as liquidated damages any property, money or other consideration given to the United States or any Federal agency for such money or property, as the case may be..."

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EFFECTIVE: 01/31/78

46-3.5 Suits by Individuals

(1) Statutory provisions (Title 31, USC, Section 232)

(a) Suits may be brought and carried on by any person at his own expense in name of U. S. but cannot be withdrawn or discontinued without written consent of judge and USA.

(b) Copy of complaint must be served upon USA for district in which suit is brought and copy of complaint with written disclosure of evidence and information material to prosecution of suit must be sent to Attorney General, Washington, D. C., via registered mail.

(c) U. S. has 60 days after service within which to enter appearance in suit. Person filing suit may carry it on if U. S. fails to enter suit during that period. If U. S. enters case within the 60-day period, suit will be carried on solely by U. S.

(d) In carrying on suit, U. S. is not bound by action taken by person bringing suit except that, in event U. S. does not carry on suit with due diligence within six months from date of its appearance or within time allowed by court, person bringing suit may carry it on.

(e) Court shall have no jurisdiction to proceed with suit by person if suit was based upon information or evidence in possession of agency, officer, or employee of U. S. at time suit was brought.

(f) Court may award person bringing suit, if suit is carried on by U. S., fair and reasonable compensation not to exceed 10% of proceeds of suit or settlement.

(g) Court may award person bringing suit and prosecuting it to final judgement or settlement a fair and reasonable amount not in excess of one fourth of proceeds of suit or settlement in addition to reasonable expenses incurred and court costs.

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EFFECTIVE: 01/31/78

46-3.6 Handling of Complaints

(1) From sources other than FBI to effect that private individual has filed a civil suit

(a) Check field office records to determine whether there is or has been criminal investigation.

(b) Furnish FBIHQ with pertinent facts in court action and results of search of indices.

(c) If no prior investigation has been undertaken, contact individual filing suit and obtain all evidence in his possession regarding alleged fraud. Forward information to FBIHQ and take no further action unless specifically authorized by FBIHQ.

(2) Departmental letter transmitted to field office by FBIHQ. Obtain facts with regard to claim and nature of fraud immediately since Department has limited time in which to consider whether U. S. Government will become party to the suit.

EFFECTIVE: 01/31/78

46-3.7 Policy

Case in which criminal investigation has been undertaken or completed. No action should be taken regarding civil phases of case unless one of two following actions occurs:

(1) Receipt of FBIHQ authority based upon written letter from Civil Division of Department usually containing outline of alleged false claim, statute under which proceeding, facts available, and specific information desired.

(2) Receipt of request for investigation from USA based upon instructions from Civil Division. In this instance FBIHQ should be immediately notified upon receipt of request and communication should state that investigation will proceed UACB.

(3) Receipt of request for investigation from USA without

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instructions from Civil Division. USA has authority on his/her own initiative to handle civil fraud aspect of following:

(a) Claims arising under Dependents Assistance Act of 1950

(b) Claims against veterans arising out of educational provisions of Servicemen's Readjustment Act but excluding educational institutions

(c) Claims against applicants for Department of Veterans Affairs hospitalization, dental care, medical care, and domiciliary care

(d) Claims against applicants for unemployment and self-employment benefits under Servicemen's Readjustment Act

(e) Claims against applicants for Department of Veterans Affairs pension and disability compensation

(4) In these instances FBIHQ should be immediately notified upon receipt of request and communication should state that investigation will proceed UACB.

(5) Case in which investigation is requested by Civil Division and it is found that no previous complaint of a criminal nature has been received relating to activity to be investigated in civil action. Investigation should have as purpose the development of both civil and criminal phases. FBIHQ will transmit copies of reports to both Criminal Division and Civil Division of Department.

EFFECTIVE: 10/16/90

46-3.8 Investigative Procedure

(1) Essential data to be obtained

(a) Proof of fraud involved

(b) Aggregate amount of fraud which can be included in civil suit

(c) Proof of damages, if any, suffered by U. S. Government

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(d) Itemization of individual claims involved

(e) Pertinent details regarding contracts and contract specifications including type of contract involved

(2) Handling of original statement, exhibits, and evidence. Do not destroy any original investigation of sabotage and fraud against the Government cases, even though statute of limitations has appeared to run under false claims statute, without presenting such matters to FBIHQ for referral to the Civil Division.

(3) Maintain case in pending status to report results of civil suit even though all requested investigation has been conducted.

EFFECTIVE: 10/16/90

46-3.9 Statute of Limitations

(1) False Claims statute (Title 31, USC, Section 235) - suit must be commenced within six years after commission of the act.

(2) Contract Settlement Act (Title 41, USC, Section 119) - no limitation

(3) Federal Property and Administrative Services Act of 1949 (Title 40, USC, Section 489) - U. S. Court of Appeals, Sixth Circuit, held 3-22-54, in U. S. v. Witherspoon (211 F. (2nd) 858) that suit must be commenced within five years from date when claim first accrued, pursuant to Title 28, USC, Section 2462. Court ruled that exception exists in regard to any suit pertaining to offenses involving fraud or attempted fraud against U.S. during war, in which case statute of limitations is suspended until three years after termination of hostilities as proclaimed by President or Congress (Title 18, USC, Section 3287).

(4) U. S. Court of Appeals, Fifth Circuit, had previously held in U. S. v. Weaver (207 F. (2nd) 796) that there was no applicable statute of limitations under section 26 (b) of the Surplus Property Act (Title 50, USC, Section 1635 (b) which was repealed and re-enacted as section 209 (b) of the Federal Property and Administrative Services Act of 1949 (Title 40, USC, Section 489).

(5) The Civil Division has advised Bureau that policy of

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the Department will be to press the issue as to applicability of five-year statute before other circuit courts and to urge soundness of decision in U. S. v. Weaver.

(6) Common law action - no limitation on action by U. S. for actual damages arising out of fraud against it.

EFFECTIVE: 10/16/90

46-3.10 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, 190-7.

EFFECTIVE: 10/16/90

46-3.11 Character - False Claims - Civil Suits

EFFECTIVE: 10/16/90

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SECTION 62. ADMINISTRATIVE INQUIRIES, ET AL

[62-1 MISCONDUCT INVESTIGATIONS OF FBI EMPLOYEES, OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE AND FEDERAL JUDICIARY

62-1.1 / Policy

(1) Allegations concerning misconduct on the part of officers or employees of the Department of Justice or of the Federal judiciary which do not involve violations of any statute within the Bureau's investigative jurisdiction should be forwarded to FBIHQ immediately by letterhead memorandum (LHM) or by more expeditious means if the circumstances warrant. (If teletype or telephone is used, follow with LHM.)

(2) No investigation is to be conducted without FBIHQ authority.

(3) When authority is granted, the office to which the matter is referred by FBIHQ will be the office of origin and, upon completion of investigation, that office should submit a closing report.

(4) Reports are not to be furnished to USAs unless FBIHQ so directs.

(5) Investigations are to be handled in an expeditious manner.

[(6) Allegations concerning misconduct on the part of an FBI employee will be handled as set forth in the MAOP, Part 1, Section 13, entitled "Disciplinary Matters."]

62-1.2 Other Investigations of Government Employees

62-1.2.1 Policy

(1) Administrative investigations involving Government officials or employees shall not be conducted without prior FBIHQ authority.

(2) Prior FBIHQ authorization is not necessary in the investigation of alleged criminal violations by Government officials or employees when the alleged activities are unrelated to their official duties, except when such officials or employees are highly placed.

(3) FBIHQ authorization is not necessary in investigations of criminal violations within our primary jurisdiction by any official or employee of the Department of Justice even though the activities are related to their official duties.

(4) In any event FBIHQ should be immediately advised by LHM transmitted by airtel, or by teletype, as the exigencies of the case dictate, of the full facts of the complaint and the action being taken. (If teletype is used, also submit LHM by airtel immediately.)

(5) Investigation of violations of statutes within the Bureau's investigative jurisdiction by Treasury Department employees and other persons in matters within the administrative control of the Treasury Department are conducted by the Bureau under a Justice Department agreement with that Department dated 2-5-55. This agreement supplements Public Law 725, 83rd Congress (approved 8-31-54), which confers upon the Attorney General and FBI the authority to investigate violations of Title 18, USC, on the part of Government employees unless such authority is otherwise assigned by another provision of law.

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SECTION 62. ADMINISTRATIVE INQUIRIES, ET AL

(6) Because of certain provisions of the Internal Revenue Code relative to corruption violations involving employees of the Treasury Department, an agreement was necessary to bestow exclusive jurisdiction upon the FBI in these matters. Prior to this agreement, the Bureau was estopped from conducting investigations of allegations of bribery and fraudulent practices on the part of employees of the Treasury Department by the provisions of Public Law 79, 82nd Congress, approved by the President on 7-16-51. The Bureau is to be informed immediately of the receipt of complaints of violations within the Bureau's jurisdiction on the part of the Treasury Department personnel or in Treasury Department matters. A brief statement of the facts of the complaint and the action being taken is to be forwarded to FBIHQ by Air Mail Special Delivery letters, airtel, teletype, or telephone depending upon the urgency of the circumstances. (If teletype or telephone is used, follow with LHM.) In a complaint involving a Treasury Department employee, the initial communication to the Bureau should identify the employee, his/her position, and the Treasury branch where he/she is employed. Any instances of delay on the part of the Treasury Department in referring complaints, encroachment by the Treasury Department of the Bureau's investigative jurisdiction, or lack of cooperation by Treasury Department officials or employees should be immediately referred to FBIHQ. Submit four copies of an LHM in all cases in which investigation is instituted. Dissemination of the LHM will be made in Washington, D.C., and no copies of LHMs are to be furnished on a local level other than to USAs.

62-1.3 Misconduct Investigations of FBI Employees

62-1.3.1 Policy

(1) Allegations of criminality or serious misconduct on the part of FBI employees.

(2) Inquiries will be conducted and reported as described in MAOP, Part I, Section 13, entitled "Disciplinary Matters."

(3) Inquiries will be placed in a separate[263]classification file, both in the field division and FBIHQ, and stored in the SAC's safe in the field and in the secure personnel file section at FBIHQ.

62-1.4 Privacy Act - Requirements

(1) When interviewing anyone in the above classification, in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in Part I, 190-5, subparagraphs (2) and (3), of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7, of this manual.

[62-1.5 Character - Administrative Inquiries

The character "Administrative Inquiry," which is applicable to investigations of personnel of the Department of Justice and the Federal judiciary only, should be used until such time as FBIHQ instructs that it be changed to some substantive violation. In the event the allegation is against an FBI employee, the character will be "Office of Professional Responsibility Matter (OPRM)" and should be dealt with in accordance with Part I, Section 263, of this manual.]

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SECTION 77. BACKGROUND INVESTIGATION - PRESIDENTIAL APPOINTMENT
WITH SENATE CONFIRMATION; - U.S. COURTS; - DEPARTMENT
OF JUSTICE; - U.S. ATTORNEY'S OFFICE STAFF;
- CONGRESSIONAL STAFF; - U.S. ATTORNEY'S OFFICE;
- DEPARTMENT OF JUSTICE - REIMBURSABLE;
|BACKGROUND REINVESTIGATION - DEPARTMENT OF JUSTICE|

77-1 GENERAL INSTRUCTIONS

These instructions supplement those outlined in Part II,
Section 17 of this manual and pertain to the following
|subclassifications and|positions:

EFFECTIVE: 07/02/93

77-1.1 77A: Background Investigation - Presidential Appointment
with Senate Confirmation - Nonreimbursable (See MAOP,
Part II, 3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, Part
II, 17-2; Correspondence Guide-Field, 1-17.)

- (1) Supreme Court Justice
- (2) U.S. Court of Appeals Judge
- (3) U.S. District Court Judge
- (4) Court of International Trade Judge
- (5) U.S. Claims Court Judge
- (6) Court of Military Appeals Judge
- (7) Court of Veteran Appeals Judge
- (8) Attorney General of the U.S.
- (9) Director, FBI
- (10) Administrator/Deputy Administrator, DEA

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- (11) Deputy Attorney General
- (12) Assistant Attorney General
- (13) U.S. Marshal
- (14) U.S. Attorney
- (15) Department of Justice Executive
- (16) Unspecified Position
- | (17) Other |

EFFECTIVE: 12/01/93

| 77-1.2 | 77B: | Background Investigation - U.S. | Courts - 15 Year |
- Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2
and 10-23; MIOG, Part I, 77-3, Part II, | 17-2, 17-2.1; |
Correspondence Guide-Field, 1-17.)

- (1) Bankruptcy Judge
- (2) U.S. Magistrate Judge

| The above investigations are conducted for the
Administrative Office of the U.S. Courts.

EFFECTIVE: 12/01/93

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77-1.3 | 77C:| Background Investigation -|U.S. Courts - 10-15
Year - Reimbursable|(See MAOP, Part II, 3-1.1, 3-1.2
and 10-23; MIOG, Part I, 77-3, Part II,|17-2, 17-2.1;|
Correspondence Guide-Field, 1-17.)

| (1) |Circuit or District Court Executive|

| (2) |Bankruptcy Trustee|

| (3) |U.S. Probation Officer|

| (4) |Pretrial Services Officer|

EFFECTIVE: 12/01/93

77-1.4 | 77D:| Background Investigation - U.S. |Courts - 3-10
Year - Reimbursable|(See MAOP, Part II, 3-1.1, 3-1.2 and
10-23; MIOG, Part I, 77-3, Part II,|17-2, 17-2.1;|
Correspondence Guide-Field, 1-17.)

| (1)Public Defender

| (2) Other|

EFFECTIVE: 12/01/93

77-1.5 | 77E:| Background Investigation -|Department of Justice -|
Nonreimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and
10-23; MIOG, Part I, 77-3, Part II, 17-2; Correspondence
Guide-Field, 1-17.)

| (1)Foreign Intelligence Surveillance Court (FISC) Judge
(See MIOG, Part II, 23-9.5)

| (2) Schedule C (Political Appointment)

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- (3) Departmental Attorney
- (4) Departmental Staff
- (5) Honor Recruit Attorney
- (6) Paralegal Assistant/Specialist
- (7) Executive Office Staff

EFFECTIVE: 12/01/93

- 77-1.6 | 77F: | Background Investigation - U.S. Attorney's
Office | (Staff) - Reimbursable | (See MAOP, Part II, 3-1.1,
3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.3, Part II,
17-2, 17-2.1; Correspondence Guide-Field, 1-17.)

| U.S. Attorney's Office Staff (Field) |

EFFECTIVE: 12/01/93

- 77-1.7 | 77G: | Background Investigation - Congressional Staff -
Nonreimbursable | (See MAOP, Part II, 3-1.1, 3-1.2 and
10-23; MIOG, Part I, 77-3, Part II, 17-2; Correspondence
Guide-Field, 1-17.)

| Congressional Committee Staff |

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77-1.8 [77H:| Background|Investigation - U.S. Attorney's Office
(Attorney)| - Reimbursable (See MAOP, Part II,
3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3,|77-4.3,|Part
II,|17-2, 17-2.1;|Correspondence Guide-Field, 1-17.)

- (1) |Assistant U.S. Attorney|
- (2) |Special Attorney|
- (3) |Cross Designated Attorney|

EFFECTIVE: 12/01/93

77-1.9 [77I:| Background|Investigation|- Department of
Justice - Reimbursable (See MAOP, Part II, 3-1.1,
3-1.2 and 10-23; MIOG, Part II,|17-2, 17-2.1;|
Correspondence Guide-Field, 1-17.)

- (1) |U.S. Trustee|
- (2) |Assistant U.S. Trustee|
- (3) |Chapter 13 Trustee|
- (4) |Administrative Law/Immigration Judge|
- (5) |Other|

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77-1.10 | 77J:| Background Reinvestigation - Department of
Justice -|10|Year - Reimbursable (See MAOP, Part II,
3-1.1, 3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.11, Part
II, 17-2,|17-2.1,|17-6.8; Correspondence Guide-Field,
1-17.)

| (1) DOJ|Executive|

| (2) DOJ|Attorney|

| (3) Field|Attorney|

(4) DOJ Staff

(5) Field Staff

EFFECTIVE: 12/01/93

77-1.11 | 77K:| Background Reinvestigation - Department of
Justice -|7|Year - Reimbursable (See MAOP, Part II, 3-1.1,
3-1.2 and 10-23; MIOG, Part I, 77-3, 77-4.11, Part II,
17-2,|17-2.1,|17-6.8; Correspondence Guide-Field, 1-17.)

| (1) DOJ|Executive|

| (2) DOJ|Attorney|

| (3) Field|Attorney|

(4) DOJ Staff

(5) Field Staff

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||77-1.12 77L:| Background Reinvestigation - Department of Justice -
5 Year - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and
10-23; MIOG, Part I, 77-3, |77-4.11, |Part II,
17-2, |17-2.1, 17-6.8; |Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

EFFECTIVE: 12/01/93

||77-1.13 77M:| Background Reinvestigation - Department of Justice -
3 Year - Reimbursable (See MAOP, Part II, 3-1.1, 3-1.2 and
10-23; MIOG, Part I, 77-3, |77-4.11, |Part II, |17-2, 17-2.1,
17-6.8; |Correspondence Guide-Field, 1-17.)

- (1) DOJ Executive
- (2) DOJ Attorney
- (3) Field Attorney
- (4) DOJ Staff
- (5) Field Staff

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77-2 INITIATION OF INVESTIGATION

(1) Completed SF-86 (Questionnaire for Sensitive Positions) forms are received from the referral agencies in most cases. These forms are reviewed by FBIHQ personnel for conformance and completeness. Obvious deficiencies are identified and appropriate leads set forth to resolve inconsistent and/or incomplete information, in addition to routine investigative leads. The initial investigative leads are set by FBIHQ, using the SF-86 as a guide. Any additional leads discovered by the field during investigation should be set out expeditiously (see Part II, Section 17-3.7 of this manual). Individuals conducting investigations should be familiar with Part II, Sections 17 and 23-6 of this manual and Part II, Section 10-13.3 of the Manual of Administrative Operations and Procedures.

(a) For most Presidential appointments (77A cases), the completed SF-86 is not received from the referral agency. The SF-86, Supplement to SF-86, Supplemental Instructions for Completing SF-86, and two copies of the U.S. Department of Justice Tax Check Waiver are sent directly to the candidate from FBIHQ. It is the responsibility of the field to gather these forms during the initial candidate interview and expeditiously forward the original documents, along with fingerprint cards and a copy of the candidate interview (on FD-302), to FBIHQ so appropriate leads may be set forth. In order to ensure prompt handling of the candidate's forms, the initial interview of the candidate should be conducted within five (5) working days after receipt of instructions from FBIHQ.

(b) Further, the field is responsible for setting out leads regarding information disclosed by the candidate during his/her initial interview which does not appear on the SF-86.

(2) Investigations in these categories are usually ordered by teletype or airtel and must be given preferential and expeditious attention.

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77-3 SCOPES OF INVESTIGATION (See MIOG, Part I, 77-1.1 through
 |77-1.13.)|

Investigations in these categories should include all investigation required in Part II, Section 17 of this manual, unless otherwise noted. The type of BI will be set out in the opening communication by subclassification. The scopes of investigation for 77 subclassifications are as follows:

- (1) 77A - Covers the candidate's adult life, since age 18.
- (2) |77B|- Covers the past 15 years of the candidate's life or to age 18, whichever is less, but in no case less than two (2) years.
- (3) |77C|- Covers |between|the past|10 to 15|years of the candidate's life or to age 18, whichever is less, but in no case less than two (2) years. |The specific scope will be identified in the opening communication.|
- (4) |77D|- Covers |between|the past|3 to 10|years of the candidate's life or to age 18, whichever is |less. The specific scope will be identified in the opening communication.|
- (5) |77E|- Covers the past 10 years of the candidate's life or to age 18, whichever is less, but in no case less than two (2) years.
- (6) |77F|- Covers the past 10 years of the candidate's life or to age 18, whichever is |less, but in no case less than two (2) years.|
- (7) |77G|- Covers the past 10 years of the candidate's life or to age 18, whichever is |less, but in no case less than two (2) years.|
- (8) |77H|- Covers the past 10 years of the |candidate's life, or to age 18, whichever is less.|
- (9) |77I|- Covers the past |10|years of the |candidate's life, or to age 18, whichever is less.|
- (10) |77J|- Covers the past |10|years of the employee's life.

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| (11) | 77K | - Covers the past | seven (7) | years of the
employee's life.

| (12) | 77L - Covers the past five (5) years of the
employee's life.

| (13) | 77M - Covers the past three (3) years of the
employee's life.

EFFECTIVE: 12/01/93

| 77-3.1 | Revised and renumbered as 77-4.3 |

EFFECTIVE: 07/02/93

| 77-3.2 | Revised and renumbered as 77-4.4 |

EFFECTIVE: 07/02/93

| 77-3.3 | Revised and renumbered as 77-4.5 |

EFFECTIVE: 07/02/93

| 77-3.4 | Revised and renumbered as 77-4.2 |

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EFFECTIVE: 07/02/93

77-4 | ADDITIONAL INVESTIGATIVE GUIDELINES

| In addition to investigation required in Part II, Section
17 of this manual, the following investigation must be conducted:

EFFECTIVE: 07/02/93

77-4.1 | Issues/Derogatory Information Developed

| During any BI, regardless of the scope of investigation
and/or the questions, issues or derogatory information developed
should be fully investigated and brought to a logical conclusion.
This includes a candidate's admission of illegal or unusual activity
prior to the scope of the BI.

EFFECTIVE: 07/02/93

77-4.2 | Qualifications

| In all cases concerning Federal judgeships (including
U.S. Bankruptcy and U.S. Magistrate Judges), other Presidential
appointments and attorney positions, ascertain the overall
qualifications of the candidates, as well as character, loyalty,
reputation, etc. Specific comments from each person interviewed
should be set forth in the report. In cases concerning U.S.
Bankruptcy Judge and U.S. Trustee positions, also obtain comments
concerning the candidate's experience in bankruptcy matters.

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77-4.3 Prescreening Reports (See MIOG, Part I, 77-1.6 & 77-1.8,
Part II, 17-2, 17-2.1.)

Candidates under consideration for field positions in the U.S. Attorneys' Offices (77Fs and 77Hs) undergo a prescreening process in most cases. Contact should be made with the U.S. Attorney's Office where the candidate will serve in order to review the prescreening report and interview the Administrative Officer to obtain any information of interest to our investigation.

EFFECTIVE: 12/01/93

77-4.4 Bar Membership/Certified Public Accountant (CPA) Status

If the candidate is an attorney or CPA, determine if he/she is licensed to practice in every state where the candidate has lived or worked since completing his/her professional education. Check grievance committee records in any state where the candidate is or has been licensed. It is not necessary to verify membership in voluntary associations such as the American Bar Association. When verifying that the candidate is licensed to practice, the following statement must appear: "The above-named agency is the licensing agency for attorneys (or CPAs) in the State (or Commonwealth) of (state name)."

EFFECTIVE: 07/02/93

77-4.5 Judicial and Other Positions Requiring Senate Confirmation (See MIOG, Part I, 77-4.6 and 77-4.9.)

Captioned positions require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

(1) All names of the candidate's close family members and current cohabitants, who are age 18 or older, should be searched through the records of the U.S. Attorney's Office in the district

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where they currently reside.

(2) Verify the candidate's ownership of all real estate, and check deed(s) for any covenants regarding race, religion, etc.

(3) Check records of county clerk (or equivalent) to determine if any personal, tax or mechanical liens exist. If so, fully explain. Do not contact Internal Revenue Service for any details regarding Federal tax liens, as this is done by the referral agencies.

(4) When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias or prejudice against any group, and ability to weigh conflicting testimony and make factual determinations through:

(a) Interviews of six (6) attorneys who are acquainted with the candidate, to include three (3) attorneys with whom the candidate associates and three (3) who have opposed, or have appeared before, the candidate in court;

(b) Interviews of three (3) Federal, state and local judges familiar with the candidate; and

(c) Interviews of the Chief Federal judge and the U.S. Attorney in the district where the candidate will serve, if appointed.

(5) Interview the candidate's personal physician regarding the candidate's health (Senate confirmation cases only).

(6) Identify all organizations to which the candidate belongs or has belonged, including private and social clubs. Obtain information from an official about the membership policy of the organization with regard to race, religion, sex, etc. Ensure the possibility of de facto discrimination is explored. If the organization has/had a discriminatory membership policy, determine whether the candidate participated in changing or attempting to change the policy.

(7) Interview local and state chairpersons of both major political parties (Senate confirmation cases only).

(8) Interview local religious and labor leaders in the candidate's geographic area, only when instructed to do so by FBIHQ.

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(9) Interview leaders of prominent minority/civil rights groups such as the NAACP, National Urban League, NOW or others that are active in the candidate's geographic area. Identify the position held by the interviewee within the organization.

(10) Interview three (3) local, state and/or Federal law enforcement officials in the district where the candidate will serve, if appointed. Agents are encouraged to interview representatives of agencies other than the FBI. (See MAOP, Part I, Section 1-15.3(5).)

(11) Review files of appropriate Federal regulatory agency if the candidate is or was employed in a regulated business (e.g., banking, brokerage firm, etc.).

(12) Review any articles written by, or speeches made by the candidate for indications of bias or prejudice regarding race, color, religion, gender, etc. (Ensure that the text of any articles or speeches that indicate, or could be construed to indicate, bias are enclosed with the report.)

(13) In those cases requiring Senate confirmation, Washington Metropolitan Field Office will interview the U.S. Senators from the state where the candidate will serve and will review U.S. Secret Service and, if appropriate, Office of Inspector General (Investigations) and Public Integrity Section, DOJ files. If past/current DOJ employee, also review Office of Professional Responsibility and personnel files as appropriate.

(14) Review records of the state judicial review committee/board, if candidate is/was a city or state judge. Also, review county/state election commission files, if the judge was elected to the position.

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77-4.6 U.S. Attorney/U.S. Marshal Update BIs

(1) An understanding has been established with the Department of Justice (DOJ) concerning the BIs of U.S. Attorneys and U.S. Marshals who are being considered for reappointment to their current positions, and who have been the subjects of previous FBI BIs as outlined in 77-4.5.

(2) The update BIs should be limited to specific areas identified as follows:

(a) Credit and arrest checks concerning the candidate;

(b) U.S. Attorney's Office record checks concerning the candidate;

(c) Interviews of neighbors at employee's present residence and other residences since the previous investigation, last five (5) years only;

(d) Interviews of the chief Federal judge and two (2) other Federal judges, and the clerk of the court in the candidate's district;

(e) Interview of the U.S. Attorney in the candidate's district (U.S. Marshal candidates);

(f) Interviews of the candidate's listed references and associates;

(g) Interviews of at least three (3) officials of Federal agencies;

(h) Interviews of at least three (3) local police chiefs and sheriffs in the candidate's district;

(i) Check of appropriate DOJ records (Office of Professional Responsibility, Office of the Assistant Inspector General for Investigations, Public Integrity Section and Official Personnel File);

(j) State bar and grievance checks (U.S. Attorney candidates); and

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(k) FBI record checks concerning the candidate,
close relatives and cohabitants.

EFFECTIVE: 07/02/93

77-4.7 U.S. Trustee and Other Trustee Positions

These positions also require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

(1) All names of candidate's close family members and current cohabitants, who are 18 or older, should be searched through the records of the U.S. Attorney's Office in the district where they currently reside.

(2) When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias (against social classes of citizens, members of any group - religious, ethnic or racial), etc., through the following:

(a) Interviews of three (3) creditor representatives (a creditor representative is an individual, usually an attorney, who represents a creditor's interest at a bankruptcy hearing) who have knowledge of the candidate;

(b) Interviews of two (2) bankruptcy judges before whom the candidate has appeared and/or who have knowledge of the candidate;

(c) Interview of the Chief U.S. Bankruptcy Judge of the district in which the candidate would serve, if appointed.

(3) Review files of appropriate Federal regulatory agency if the candidate is or was employed in a regulated business (i.e., banking, brokerage firm, etc.).

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EFFECTIVE: 07/02/93

77-4.8 Administrative Law/Immigration Judge Positions

The Executive Office for Immigration Review is responsible for the administration and interpretation of the immigration laws. The Administrative Law and Immigration Judges act independently in their decision-making capacity, and their decisions are administratively final unless appealed or certified to the Board of Immigration Appeals. These quasi-judicial positions also require a more in-depth investigation which must encompass the following in addition to investigative instructions set out in Part II, Section 17 of this manual:

(1) All names of the candidate's close family members and current cohabitants, who are age 18 or older, should be searched through the records of the U.S. Attorney's Office in the district where they currently reside.

(2) When applicable, determine the candidate's professional reputation, legal ability, types of cases handled, trial experience, courtroom demeanor, reputation for fairness, temperament, bias (against social classes of citizens, members of any group - religious, ethnic or racial), etc., through:

(a) Interview of the Chief Administrative Hearing Officer (Administrative Law Judge candidates only);

(b) Interview of the Chief Immigration Judge (Immigration Judge candidates only); and

(c) Interviews of three (3) developed sources (individuals not provided by the candidate) who have, to the extent practical, knowledge of the candidate's professional reputation, etc.

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77-4.9 U.S. Bankruptcy and U.S. Magistrate Judge Positions

U.S. Bankruptcy and U.S. Magistrate Judge positions do not require Senate confirmation; however, they are judicial positions and require a more in-depth investigation. In addition to investigative instructions set out in Part II, Section 17 of this manual, investigation as set out in 77-4.5 of this section should be conducted in these BIs, unless otherwise indicated.

EFFECTIVE: 07/02/93

77-4.10 FISC and Other Special Tribunal Judge Positions

(1) The scope of the reinvestigation of a Federal judge under consideration for an appointment to a Special Tribunal is limited to specific areas identified as follows:

- (a) Credit and arrest checks concerning the candidate;
- (b) Interviews of the neighbors at the candidate's present residence and other residences since the previous investigation, last five (5) years only;
- (c) Verification of state bar membership and check grievance records;
- (d) Interviews of the chief Federal judge and three (3) other Federal judges (district and appellate) in the candidate's district;
- (e) Interviews of three (3) attorneys in private practice who have appeared before the candidate or who have knowledge of the candidate;
- (f) Interviews of the U.S. Attorney and the U.S. Marshal in the candidate's district;
- (g) Interview of the representative of any social club or organization in which the candidate holds membership to determine if the organization has/had a discriminatory membership

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policy;

(h) Review of appropriate records at the Administrative Office of the U.S. Courts and the Public Integrity Section, DOJ; and

(i) FBI record checks concerning the candidate, close relatives and cohabitants.

(2) This BI is not an appraisal of the candidate's performance as a Federal judge; therefore, comments regarding judicial qualifications should not be elicited. This BI should seek to obtain comments concerning the candidate's character, associates, reputation, loyalty, discretion, personal demeanor, illegal drug use, prescription drug/alcohol abuse, financial responsibility, and bias. As procedure dictates in any BI, should unfavorable information be developed during the course of the investigation, additional investigation will be conducted as necessary to resolve any issues developed.

EFFECTIVE: 07/02/93

77-4.11 Background Reinvestigation for DOJ Positions (77J-M) (See MIOG, Part I, 77-1.10 through 77-1.13, Part II, 17-6.8.)

In addition to investigative instructions set out in Part II, Section 17 of this manual, ensure the investigation includes at least three (3) developed sources (individuals not provided by the employee) who have, to the extent practical, social knowledge of candidate. Developed sources may include other associates, co-workers (peers/support employees), etc. Also, review the Official Personnel File and other appropriate files at DOJ, and interview supervisor(s) and co-workers within the scope of the BI.

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77-5 INTERVIEW OF CANDIDATE/EMPLOYEE

Each candidate/employee must be interviewed. During the interview, he/she should be provided with the following information:

(1) The FBI will be conducting a BI to develop information which others will consider in determining suitability for employment, appointment or reappointment.

(2) The FBI does not participate in such decisions and makes no recommendations pertaining thereto.

(3) The FBI is not restricted in the BI only to information solicited by the SF-86 or any other form submitted.

All items in Part II, Section 17-3.2 and 17-5.6 of this manual must be covered during the interview.

EFFECTIVE: 07/02/93

77-6 REPORTING RESULTS OF INVESTIGATION

(1) All investigation must be submitted in investigative report format. This is to include unsuccessful attempts to locate individuals for interview and any investigative results previously set out in airtel or teletype. All investigation in these matters is for other Government agencies and can only be forwarded by report. Each interview must contain statements regarding financial responsibility and whether or not the interviewee is aware of any past/present illegal drug use or prescription drug/alcohol abuse by the candidate.

(2) Reports should be organized to follow in general the sequence presented in Part II, Section 17-6 of this manual. All categories of interviews (i.e., neighborhood, employment, education) must be preceded by headings. Additionally, block headings should separate each residence and employment and should include the name of employing firm/residence address, city/state, and dates of employment or residence as indicated by candidate on the SF-86. If a discrepancy is found in dates during the investigation, the field office should underline the dates obtained during the investigation. This will indicate to FBIHQ that the discrepancy is not the result of a

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typographical error. Lengthy reports (more than 25 pages) should include a table of contents. If an interview would logically fall under several headings (i.e., a reference who is also a neighbor), report the interview fully under one heading and cross-reference under any other appropriate headings.

EFFECTIVE: 07/02/93

77-7 POLITICAL AFFILIATION

(1) Nonessential references to a candidate's affiliation with any political party should be omitted.

(2) Essential references to political affiliation should be included. An essential reference is one which suggests a possible inclination on the part of the candidate to use the position he or she is seeking for personal political benefit or one which would reflect on the candidate's ability to perform his or her duties fairly without regard to political affiliation or influence. Also, previous candidacy for or occupancy of public office or office in a political party, or personal or political association with an occupant of public or party office would be essential.

EFFECTIVE: 07/02/93

77-8 REQUEST FOR INVESTIGATION OR NAME CHECK FROM FEDERAL JUDGE (See MAOP, Part II, 9-4.2.2(2).)

Investigations are conducted only at the specific request of referral agencies and can only be initiated by FBIHQ. Any request by a Federal judge for a BI should be respectfully forwarded to FBIHQ for referral to the Administrative Office of the U.S. Courts. At the request of a Federal judge, the names of persons being considered for court positions can be searched through field office indices and pertinent information furnished to the judge. Care should be exercised in order to fully protect any informant, technique or source.

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||77-9| STATUS INQUIRIES

If any outside inquiries are received concerning the status of a BI, no comment should be made concerning the progress or completion of the investigation. The caller should be politely referred to the agency requesting the BI for a determination of the BI status.

EFFECTIVE: 07/02/93

||77-10| PRIVACY ACT (PA) REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to elicit information concerning someone else (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual. When the interviewee requests confidentiality under the PA, the level of confidentiality must be clearly set forth in the document recording the results of the interview. Refer to Part II, Section 17-5.4 of this manual for additional instructions.

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||77-11| CHARACTER - BACKGROUND INVESTIGATION - PRESIDENTIAL
APPOINTMENT WITH SENATE CONFIRMATION; - U.S. COURTS; -
DEPARTMENT OF JUSTICE; - U.S. ATTORNEY'S OFFICE STAFF; -
CONGRESSIONAL STAFF; - U.S. ATTORNEY'S OFFICE; -
DEPARTMENT OF JUSTICE - REIMBURSABLE; BACKGROUND
REINVESTIGATION - DEPARTMENT OF JUSTICE

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SECTION 137. |CRIMINAL|INFORMANTS|(SEE MIOG, PART II,
10-3; LEGAL ATTACHE MANUAL, 6-12;
LEGAL HANDBOOK FOR SPECIAL AGENTS, SECTION 8.)|

|137-1| RESPONSIBILITY FOR THE DEVELOPMENT AND OPERATION OF
INFORMANTS

(1) The SAC of each field office is personally responsible for the establishment of informant coverage concerning criminal activity of interest to the FBI within his/her territory. Particular emphasis is to be placed on the priority investigative matters of the office. Informants are an integral part of the office's overall criminal informant and cooperative witness intelligence base. The SAC must ensure that his/her Agents make every effort to develop quality informants, and that Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. The development and operation of informants must be closely supervised, because of the significant contributions which they make to FBI investigations and because of the difficulties inherent in their operation. Accordingly, the SAC should ensure that informant files are reviewed every 60 days by a Supervisory Special Agent.

(2) Each SUPERVISORY SPECIAL AGENT is personally responsible for the establishment of informant coverage concerning criminal matters under his/her supervision. Each Supervisor must ensure that Agents under his/her supervision make every effort to develop quality informants, and that their Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. Supervisors will review the informant files of those individuals being developed or operated by Agents under their supervision at least every 60 days. The fact that such a review was conducted must be documented in the informant's file on an FD-675 and indexed on the FD-237. The purpose of this review is to ensure that the informant is being operated in accordance with FBI and Attorney General Guidelines, and that adequate coverage is established for the investigative matters under his/her supervision. In fulfilling this responsibility, it is strongly suggested that the Supervisor periodically meet with the informants being operated by Agents under his/her supervision. When a Supervisor is either the case Agent or alternate Agent for an informant, the responsibility for administrative oversight, including the 60-day informant file reviews,

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authorization for the informant to participate in criminal activity and the initial review of informant payments, belongs to the ASAC.

(3) Each SPECIAL AGENT involved in criminal investigative activities at least 50 percent of his/her time, and not otherwise mitigated, is personally responsible for the development and operation of productive informants to address criminal matters within his/her investigative responsibilities. The SAC of each field office has the prerogative to task Agents not working criminal matters at least 50 percent of their time with the development and operation of their productive informants or liaison contacts. Agents are responsible for ensuring that their informants are operated in a manner which is their consistent with FBI and Attorney General Guidelines.

(4) The CRIMINAL INFORMANT PROGRAM MANAGER is personally responsible for ensuring that the program is operated in an effective and efficient manner, consistent with FBI and Attorney General Guidelines.

(5) The CRIMINAL INFORMANT PROGRAM COORDINATOR is personally responsible for ensuring that the SAC and Criminal Informant Program Manager are made aware of all significant issues and developments which impact on the Criminal Informant Program.

EFFECTIVE: 12/20/93

137-1.1 | Moved to 137-2.1 |

EFFECTIVE: 12/20/93

137-1.2 | Deleted |

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EFFECTIVE: 12/20/93

||137-2| DEFINITION

An informant is any person or entity who furnishes information to the FBI on a confidential basis. |The FBI will not disclose the identity of an informant, except as provided in 137-4.2.|

EFFECTIVE: 12/20/93

||137-2.1 Categories of Informants

Informants must be classified according to one of the following categories:

(1) Organized Crime (OC) - Those providing information concerning investigations falling within the organized crime program. (Classification 137A).

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7E
(2) Top Echelon (TE) - Those providing information concerning [REDACTED]

(3) Criminal (C) - Those providing information concerning investigations into matters of a general criminal nature. (Classification 137B).

(4) Domestic Terrorism (DT) - Those providing information concerning investigations into persons or groups involved in terrorist activities within the United States, such as bombings and other criminal terrorist activities, on which the FBI has an open and approved case. (Classification 137C).

(5) White Collar Crime (WC) - Those providing information concerning violations falling within the white collar crime program. (Classification 137D).

(6) Drugs (D) - Those providing information concerning investigations falling within the drug program. (Classification 137F).

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(7) Confidential Sources (CS) - Those providing information to the FBI on a confidential and regular basis as a result of legitimate employment or routine access to records, and not as a result of association with persons of an investigative interest to the FBI. The information provided by a Confidential Source must be relevant to authorized FBI investigations. The operation of a Confidential Source must be consistent with FBI and Attorney General Guidelines. A Confidential Source may be paid reasonable amounts for services and expenses. (Classification 137E).

EFFECTIVE: 12/20/93

137-3 DEVELOPMENT OF INFORMANTS (See MIOG, Part I,
137-3.1.2(1).)

The following factors must be taken into consideration in determining an individual's suitability to be an informant:

(1) Whether the person appears to be in a position to provide information concerning violations of law which are within the scope of authorized FBI investigative activity.

(2) Whether the individual is willing to voluntarily furnish information to the FBI.

(3) Whether the individual appears to be directed by others to obtain information from the FBI.

(4) Whether there is anything in the individual's background which would make him/her unfit for use as an informant.

(5) Whether the nature of the matter under investigation and the importance of the information being furnished to the FBI outweighs the seriousness of any past or contemporaneous criminal activity of which the informant may be suspected.

(6) Whether the motives of the informant in volunteering to assist the FBI appear to be reasonable and proper.

(7) Whether the information which the informant can provide could be obtained in a more timely and effective manner

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through other sources or by a less intrusive means.

(8) Whether the informant is sufficiently reliable and trustworthy, and whether there is an adequate means by which to verify his/her truthfulness.

(9) Whether the individual appears to be willing to conform to FBI and Attorney General Guidelines regarding his/her operation.

(10) Whether the FBI will be able to adequately monitor and control the activities of the informant.

(11) Whether his/her use as an investigative technique will intrude upon privileged communications or inhibit the lawful association of individuals or the expression of ideas.

(12) Whether the use of the informant could compromise an investigation or subsequent prosecution which may require the Government to move for a dismissal of the case.

EFFECTIVE: 12/20/93

137-3.1 Suitability and Pertinence Inquiries

Prior to the certification of an individual for use as an informant or Confidential Source, a suitability and pertinence inquiry (SI) must be conducted. The purpose of this inquiry is to determine whether he/she is suitable for use as an informant or Confidential Source and the pertinence of the information likely to be provided.

(1) The SI will be conducted for a period not to exceed 120 days. An extension of the initial 120-day period may be authorized by the SAC. The notification of an extension must be entered into CIMS no later than ten working days prior to the conclusion of the initial 120-day period. It must contain the facts or circumstances which preclude completion of the SI during the initial 120-day period. If an individual cannot be certified within 240 days from initiation of the SI, he/she should be closed.

(2) During the SI, the Agent may accept information volunteered by the individual and may make reasonable payments to him/her for services and expenses. In addition, he/she may be paid

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for the information. However, these individuals may not be used to participate in criminal activities or provide substantial assistance in an undercover operation during the SI period.

(3) An informant in the SI stage of development may not be used in a preliminary domestic security/terrorism investigation without the prior approval of a Supervisory Special Agent. Such approval must be recorded in the file. (See 137-4(16).)

(4) SIs should not be used to develop information concerning an individual for the purpose of inducing him/her to become an informant or a Confidential Source.

(5) Any lawful investigative technique can be utilized in determining an individual's suitability to be an informant.

EFFECTIVE: 06/08/94

137-3.1.1 Administration of the Suitability and Pertinence
Inquiry

(1) Upon selection of an individual for use as an informant, the field office will assign a 137 field number and an alpha character from the Resource Management Information System. This alpha character will ensure the time devoted to that 137 matter is allocated to the appropriate program. At that time, the field office will also assign a sequential field office symbol number. The symbol number will contain the field office two-letter identifier as a prefix, the symbol number, the letters SI, and the suffix of either an OC, C, DT, WC, CS or D to indicate the primary area in which the informant will be providing informational assistance. Example: BA 12345-SI-WC.

(2) The SI will commence on the date the 137 file is opened.

(3) Specific authority must be obtained from the SAC to conduct an SI for the individuals identified in (a)-(d) below. FBIHQ authority must be obtained prior to converting these individuals to fully operational status. This authority may NOT be obtained on a UACB basis. The specific restrictions concerning the development or operation of these individuals is set forth in Section 137-7. (See MIOG, Part 1, 137-3.2(2).)

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(a) Privileged informants, i.e., attorneys, physicians, members of the clergy, and news media personnel.

(b) Individuals who are now or were ever in the Witness Security Program.

(c) Minors (individuals under the age of 18).

(d) A counselor in a drug treatment program.

(4) Immediately upon the opening of an informant, or upon the conversion of a cooperative witness to an informant, enter all information from the opening memorandum in the CIMS database, with the exception of those individuals identified in 137-7 which may require FBIHQ approval. All memoranda are to contain the following information: (See (5) below and 137-10.)

[illegible]

(h) A statement, if applicable, that this is a privileged occupation informant or, if applicable, a statement regarding the individual's occupation or status as a Federal or state parolee or probationer, an inmate, a past or current participant in the Witness Security Program, a law enforcement officer, an elected official, a union official, a minor, an employee of a financial institution, active duty military personnel, a school employee or a counselor in a drug treatment program. The statement should set forth

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the specific nature of the occupation, the type of information being received, how the information will be obtained and the justification for operating the source. The specific requirements for opening and operating such individuals are detailed in Section 137-7.

(5) Immediately upon the conversion of a cooperative witness to an informant, the field office must prepare a memorandum captioned with the field office two-letter identifier, symbol number and file number. However, individuals identified in 137-7.1 and 137-7.2(2) require prior FBIHQ approval. All such conversion memoranda are to contain the information set forth in 137-3.1.1(4). (See MIOG, Part I, 137-10.)

(6) If any of the above information is not available at the time the SI, the information should be obtained and entered into CIMS prior to the conversion of the individual to a fully operational informant.

EFFECTIVE: 06/08/94

137-3.1.2 Certification of Suitability and Pertinence

(1) At the conclusion of the SI, the supervisor must review the informant's file and make a written finding, based on the factors outlined in 137-3, stating whether the informant appears suitable for use and whether the information likely to be obtained from the individual is pertinent to and within the scope of the FBI's investigative responsibility. The supervisor's certification must be documented in the informant's file and indexed on the FD-237. (See MIOG, Part I, 137-3.2(1)(j).)

(2) If it is determined that the individual is not suitable for use as an informant, the inquiry is to be immediately closed by memorandum to the source file, which should include the specific reason(s) for the closing of the inquiry. This data should then be entered in the CIMS database. Additionally, if the informant is closed because of unauthorized criminal activity, other than for misdemeanor arrests, a teletype to FBIHQ, Criminal Informant Unit, is to be prepared detailing the date of arrest, the criminal activity, and the disposition of the charges. (See MIOG, Part I, 137-10.)

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EFFECTIVE: 06/08/94

| 137-3.1.3 | Moved to 137-3.1.2 |

EFFECTIVE: 12/20/93

137-3.2 Conversion From a Suitability and Pertinence Inquiry
to an Informant (See MIOG, Part 1, 137-7.2(1)(a).)

(1) An individual becomes an informant once the
supervisor certifies the individual's suitability. A memorandum is
prepared, and the information is entered in CIMS. The memorandum must
contain the following information in linear paragraph form:

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(j) Certification statement by the field office supervisor described in 137-3.1.2(1).

(k) If handled by a resident agency, identify resident agency.

(1) A statement, if applicable, that the specific requirements for opening and operating individuals detailed in Section 137-7 have been complied with. The statement should set forth specific details on how compliance was obtained.

(2) In the absence of response from FBIHQ, consider the operation of the informant to be approved. However, those individuals identified in Section 137-3.1.1(3)(a) - (d) may not be operated without a specific grant of authority from FBIHQ.

(3) Authority to operate an individual described in Section 137-7.1 must be requested in both the SI and conversion teletypes. Such teletypes may not be sent on a UACB basis.

EFFECTIVE: 06/08/94

137-3.3 | Revised and Moved--See 137-7, 137-7.1, 137-7.1.1,
137-7.1.2, & 137-7.2 |

EFFECTIVE: 12/20/93

137-3.4 | Revised and Moved--See 137-6 |

EFFECTIVE: 12/20/93

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PRINTED: 10/07/94

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| 137-4 | OPERATION OF INFORMANTS |

(1) | Every effort should be made to control the informant's activities when acting at the direction of the FBI to ensure that his/her conduct will be consistent with FBI and Attorney General Guidelines. |

(2) | Agents should not exercise improper influence on individuals in an attempt to develop them as informants, including promising immunity or reduction of sentence to those who furnish information. Any representations regarding plea agreements, immunity or other prosecutorial consideration for an informant's assistance are to be made only by the United States Attorney's Office. |

(3) | When it becomes apparent that an informant's role has changed from informational to operational in nature, i.e., making consensual recordings, introducing undercover Agents, purchasing evidence, or otherwise participating in similar operational activities, he/she must be converted to a cooperative witness. (See (15).) Thereafter, he/she must be operated in a manner which is consistent with the Part I, Section 270 of the Manual of Investigative Operations and Guidelines (MIOG). |

(4) | When it becomes apparent that an informant has furnished false information or that there is some other indication of unreliability, the Agent must promptly advise the SAC and provide FBIHQ with a teletype setting forth the factual background which gave rise to the concern. In addition, the teletype should state whether the informant has appeared as a witness on behalf of the Government in any FBI case or has furnished information which was disseminated to another agency. |

(5) | All investigative activity must be made a matter of record in the field office files, including negative contacts, to ensure that the informant's files are accurate and complete. However, contacts with an informant for payment purposes only, during which no positive information is generated, need not be reported as a negative contact on an FD-209. |

(6) | An alternate Agent must be assigned at the time the informant is opened. The alternate Agent must handle some contacts with the informant and must meet or observe the informant by the second contact after conversion. This will ensure the continued use of an informant during the absence or transfer of the case Agent. Any deviation from this requirement must be approved personally by the SAC

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and documented in a memorandum in the informant's file.

(7) Constant care should be exercised to avoid any disclosure to anyone which might result in the identification of an informant or cast suspicion upon an informant, except as described in 137-4.2.

(8) Agents have an affirmative responsibility to check the reliability of their informants.

(9) Operation of informants in undercover operations must be in compliance with FBI policy and "Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations." The operational use of informants in long-term cases or undercover operations may warrant use of a personal services contract between the informant and the FBI. This agreement must be coordinated with the substantive unit at FBIHQ and approved by the Contract Review Unit, FBIHQ. In a situation where prosecution is pending for the informant, a Plea Agreement may be warranted between the informant and the United States Government. Close coordination with the United States Attorney's Office is essential in both of these situations.

(10) All representations made to an informant regarding his/her future prosecution in cases in which he/she is a subject, must be made by the United States Attorney's Office, on behalf of the United States Government, and not by the case Agent or others, on behalf of the FBI.

(11) Care must be exercised in handling informants to ensure that they are provided with no information other than that which is necessary to carry out their assignments. Any disclosure of information to an informant obtained from criminal investigative files must have the express approval of the SAC and be documented in the informant's main file. All disseminations to informants must comply with the provisions of the Privacy Act. No dissemination may be made of information which is classified, which identifies other informants or cooperative witnesses, which is Grand Jury material (see Rule 6(e), Federal Rules of Criminal Procedure), or which is otherwise privileged. When it is decided to disseminate information regarding third persons or entities from FBI files, a teletype must be submitted to FBIHQ, on a UACB basis, under the informant's symbol number caption, setting forth the following information: (See (g) below.)

(a) That the SAC of the field office has authorized dissemination of information from FBI criminal investigative files.

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(b) The nature and seriousness of the matter being investigated.

(c) Specific details outlining the need to furnish the information to the informant.

(d) The specific information which is to be furnished to the informant.

(e) The fact that the information to be released has been coordinated with the appropriate field divisions that may be affected by such dissemination.

(f) In emergency situations, the SAC, or in his/her absence, the ASAC, may authorize the dissemination of such information from criminal investigative files and immediately thereafter advise FBIHQ in the manner described herein.

(g) If it is determined that dissemination of information from either civil or applicant investigative files is necessary in order to give the informant credibility, particularly in investigative matters dealing with loss of life, destruction of property, or which could have other serious consequences, or which may contribute to the solution of a serious crime, the SAC must seek authority from FBIHQ prior to making such a disclosure. The request in this instance must include all information outlined above in 137-4 (11) (a)-(e).

(h) If it is determined that the information from FBI files which is to be given to an informant concerns an individual of no investigative interest to the FBI, the individual should, except in the situations set forth below, be contacted in order to obtain consent to utilize the needed information. Such contact with a third party should not take place if to do so would jeopardize an investigation, disclose the identity of an informant, or when such contact could jeopardize the safety of the individual whose consent is being sought.

(i) When it is not possible or is otherwise inadvisable to obtain the third party's consent, the SAC must obtain authority from FBIHQ to disseminate such information. The request should also set forth the following information:

1. The nature and seriousness of the matter being investigated;

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| 2. | An outline of the need to furnish the
information to the informant;

| 3. | A list of specific information to be
furnished to the informant;

| 4. | Justification for not advising the
individual to whom the information pertains;

| 5. | What effect such disclosure might have on
the individual's reputation in the community; and

| 6. | The personal recommendation of the SAC. |

(j) If it is determined by the SAC that dissemination of information being considered for disclosure to an informant contains derogatory information regarding an individual who is or is not of investigative interest to the FBI, the SAC will personally make a recommendation to FBIHQ requesting authority to utilize such information.

(k) In all cases described above, wherein FBIHQ authority is required for dissemination of information from FBI files to FBI informants, this authority will be granted at the Section Chief level. All instances of such dissemination will be reviewed by the Director or Director's designee annually. The Director or Director's designee will personally authorize the dissemination of information to informants which is taken from applicant or civil files. Further, the Attorney General or Attorney General's designee will be notified of such disseminations. |

| (12) | Informants will not be used to obtain information relating to legal defense plans or strategies. When a person has been formally charged with a crime and criminal proceedings are still pending, informants will not be used to deliberately elicit information concerning the crime(s) for which the person was charged. An individual is formally charged when he/she has been charged by indictment or information or after his/her initial appearance following arrest. |

| (13) | Information of value provided by an informant on violations which are not of an investigative interest to the FBI should be disseminated to the appropriate law enforcement agency. If full disclosure is not made for one of the following reasons, then, whenever feasible, the field office should make at least limited disclosure to the law enforcement agency having jurisdiction. | The

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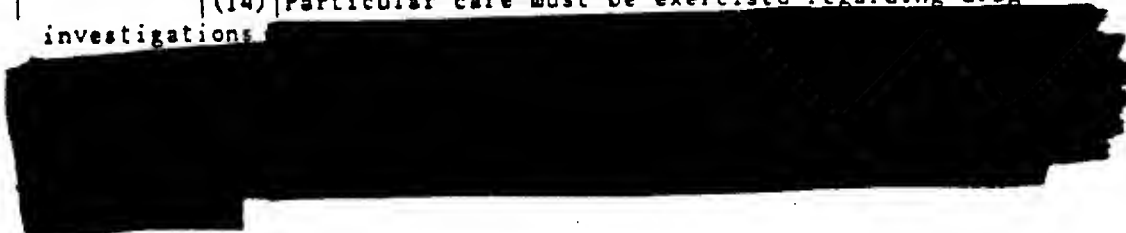
disclosure should be sufficient to apprise them of the nature and extent of the criminal activity. Full disclosure should be made to the appropriate law enforcement agency as soon as the need for restricting dissemination is no longer present. The action taken and the justification for the action should be documented in the informant's main file. Factors to be considered in making such a disclosure are whether the disclosure would jeopardize:

(a) The identity of an informant/cooperative witness;

(b) The life or personal safety of an FBI Agent, informant/cooperative witness or other persons; or

(c) A major ongoing FBI investigation.

(14) Particular care must be exercised regarding drug investigations.



(15) Increased participation in the investigation of drug trafficking will logically result in expanded use of consensual monitoring techniques. Care must be exercised to ensure that informants do not participate in consensual monitoring activities. An informant must be converted to a cooperative witness before he/she can participate in consensual monitoring activities. Any exceptions to this requirement must receive prior FBIHQ approval. Such individuals should be fully briefed as to the consequences of being converted to a cooperative witness, i.e., that they may be required to testify at trial. (See (3).)

(16) Domestic terrorism informants must be used in compliance with the "Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations." Prior to opening an informant in a Domestic Terrorism investigation, there must be an open and approved Domestic Terrorism case. (See 137-3.1(3).)

(17) Undisclosed participation in the activities of an organization by an informant in a manner that may influence the exercise of rights protected by the First Amendment must be approved

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| by FBIHQ, with notification to the Department of Justice. |

| (18) | The lawful activities of legitimate organizations are not subject to investigation. However, individual members of such organizations may be independently involved in criminal activity. In order to ensure that the privacy of constitutionally protected activities will be respected, the SAC must approve the use of any individual where:

| (a) An informant or Confidential Source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or Confidential Source's formal affiliation will give him/her continued access to nonpublic information related to the legitimate purposes of the organization.

| (b) An informant or Confidential Source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities.

| (19) In determining whether to use an informant who is engaged in the lawful activities of legitimate organizations, the SAC should consider:

| (a) The likelihood of responsible behavior by the informant during the course of his/her organizational membership.

| (b) The ability of the FBI to focus the informant's reporting on members of the organization who are involved in criminal activities and to minimize adverse impact on innocent members of the organization.

| (c) Whether the use of the informant or Confidential Source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

| (20) In order to avoid the appearance of impropriety, Agents are prohibited from engaging in business or financial relationships with informants. If an exemption to this general prohibition is deemed necessary, the SAC must articulate sufficient background to demonstrate to FBIHQ that the relationship will not create an appearance of impropriety or otherwise reflect adversely upon the FBI.

| (21) Sensitive circumstances require particular caution.

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When a criminal informant is operating under the direction of the FBI in any matter, the handling Agent and Field Supervisor will review appropriate Attorney General's Guidelines on Undercover Operations Revised 11/13/92 as well as the MIOG, Part I, Section 137 and consult with FBIHQ in the event that questions arise regarding sensitive circumstances. The following represent sensitive circumstances requiring Section Chief level approval (a discussion of extraordinary criminal activity is provided at 137-5.1(2):

(a) Any investigative activity which involves the possibility of a criminal informant engaging in activity which involves "sensitive circumstances" as defined herein, must be presented to the appropriate CID section prior to the activity taking place. The section will either authorize the activity or refer it to the Undercover Review Committee for review/approval. For purposes of these guidelines, sensitive circumstances are involved if there is a reasonable expectation that the investigative activity will involve--

1. An investigation of possible criminal conduct by any elected or appointed official, or political candidate, for a judicial-, legislative-, management-, or executive-level position of trust in a Federal, state, or local governmental entity or political subdivision thereof.

2. An investigation of any public official at the Federal, state, or local level in any matter involving systemic corruption of any governmental function.

3. An investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media.

NOTE: There are some circumstances involving officials in judicial, legislative, management, or executive-level positions which may logically be considered nonsensitive. In such instances, the Section Chief, White-Collar Crimes Section, FBIHQ, who has a national perspective on matters involving public officials, must be consulted for a determination of sensitive circumstances.

4. Engaging in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a Federal, state, or local governmental entity.

5. Establishing, acquiring, or using a proprietary.

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6. Providing goods or services which are essential to the commission of a crime, which goods and services are reasonably unavailable to a subject of the investigation except from the Government.

7. Activity that is proscribed by Federal, state, or local law as a felony or that is otherwise a serious crime — but not including the purchase of stolen or contraband goods; the delivery or sale by the Government of stolen property whose ownership cannot be determined; the controlled delivery of drugs which will not enter commerce; the payments of bribes which are not included in the other sensitive circumstances; or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exemption does not include any statement under oath or the penalties of perjury).

NOTE: Some of the above activities, including the controlled delivery of drugs and bribe payments, are subject to specific review and approval procedures. These matters must be coordinated with FBIHQ.

8. A significant risk that a person participating in an investigative activity will be arrested or will supply falsely sworn testimony or false documentation in any legal or administrative proceeding.

9. Attendance at a meeting or participation in communications between any individual and his or her lawyer.

10. A significant risk that a third party will enter into a professional or confidential relationship with a person participating in an investigative activity who is acting as an attorney, physician, clergyman, or member of the news media.

11. A request to an attorney, physician, member of the clergy, or other person for information that would ordinarily be privileged or to a member of the news media concerning an individual with whom the news person is known to have a professional or confidential relationship.

12. Participation in the activities of a group under investigation as part of a Domestic Security investigation or recruiting a person from within such a group as an informant.

13. A significant risk of violence or physical injury to individuals or a significant risk of financial loss.

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14. Activities which could result in significant claims against the United States arising in tort, contract, or for compensation for the "taking" of property.

15. Untrue representations by a person participating in an investigative activity concerning the activities or involvement of any third person without that individual's knowledge or consent.

EFFECTIVE: 12/20/93

137-4.1 Operation of Informants by Task Force Members (See MIOG, Part I, 137-4.2(5).)

(1) The primary purpose of these guidelines is to ensure that the integrity of the Criminal Informant Program is not diminished as a result of the implementation of the task force concept. These guidelines attempt to balance the need to encourage full cooperation among FBI and non-FBI task force personnel, while maintaining the level of security traditionally afforded to FBI informants. To attain this balance, Agents should limit the disclosure of the identities of FBI informants to non-FBI task force members to those situations where it is essential to the effective performance of their duties.

(2) The SAC of the office of origin may authorize task force members to act as a co-case Agent. Task force members who have been authorized by the SAC to act as a co-case Agent may be present at debriefings, witness payments, and have access to the informant's file. However, an alternate FBI case Agent must be assigned to handle the informant in the absence of the case Agent. The FBI case Agent or alternate Agent is ultimately responsible for the operation and control of the informant, including the responsibility for the preparation and submission of the necessary paperwork. A co-case Agent may meet with an informant without being accompanied by an FBI Agent, provided each such contact is fully documented. While the co-case Agent may make such contacts, it is recommended that the case Agent or alternate Agent be present during meetings with the informant. The presence of an Agent at such meetings not only serves to foster rapport, but also to ensure compliance with FBI and Attorney General Guidelines.

(3) Task force members may not be provided with the

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identity of an FBI informant, unless the SAC has granted appropriate disclosure authority or the SAC has approved him/her to be a co-case Agent for that specific individual. All task force members who have been designated as a co-case Agent must be advised of all relevant FBI and Attorney General Guidelines regarding the development and operation of FBI informants. The fact that the co-case Agent has been provided these instructions should be documented in the informant's file.

(4) In addition to being advised of the relevant FBI and Attorney General Guidelines, a task force member who has been authorized to act as a co-case Agent must be advised that:

(a) He/She is not to make any further disclosure of the identity of the informant, including to other members of his/her department or agency.

(b) He/She is not to prepare, or cause to be prepared, any paperwork or other record, other than official FBI records, regarding their contacts with or payments to FBI informants.

(c) He/She may not provide his/her department or agency with any documents or information which identify or tend to identify an FBI informant.

The fact that these instructions have been given to the task force member must be documented in the informant's file.

EFFECTIVE: 12/20/93

137-4.2 Disclosure Authority (See MIOG, Part I, 137-2 & 137-4(7), Part II, 3-8.4.)

(1) The SAC, or in his/her absence the ASAC, is responsible for granting disclosure authority to disclose the identity of an informant and will necessarily cause such disclosure of the release of information contained in an informant's file. In the decision-making process it is recommended the SAC consider the following issues:

(a) The specific nature of the information to be disclosed.

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(b) The name, title and agency or department of all individuals who will have access to the information.

(c) The specific nature of the request, demand or order which generated the disclosure request.

(d) Whether the disclosure will have an adverse impact on any individuals or FBI investigations.

(e) The SAC's recommendation as to whether the FBI should voluntarily comply with the request or whether an attempt should be made to assert appropriate administrative or legal objections to the request, demand or order.

(2) The response to any subpoena, court order, or any request bearing on the identification of an informant or the production of any informant's file, document, data, or disclosure of the identity of the informant to any individual, must have prior SAC approval. Where appropriate, the field office should have the informant execute a release form (FD-746) prior to the disclosure of the informant's identity or any information provided by the informant. Should the informant refuse to sign the release, the refusal should be noted at the bottom of the form and the informant should be advised that the FBI may nevertheless release the informant information requested, as the informant privilege belongs to the FBI as opposed to the informant. The specific admonishment given to the informant should be recorded at the bottom of the form and the form should be witnessed by two Special Agents.

(3) Any disclosure of information in the informant's file outside of the FBI, should be documented in the informant's main file, including the name of the person to whom the informant's identity was disclosed, the specific nature of the information disclosed and the reason for the disclosure.

(4) Physical possession of the source file is never to be transferred to any individual outside the FBI other than a Federal judge for in-camera ex parte review. Any dissemination of serials from the source's files is to be done only after appropriate redaction and subsequent review by both the Principal Legal Advisor and SAC.

(5) Members of joint FBI task forces may be provided with the identity of an informant on SAC authority consistent with Section 137-4.1.

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(6) FBIHQ is to be subsequently advised of the facts and circumstances regarding all disclosure issues.

EFFECTIVE: 12/20/93

137-4.3 Domestic and International Travel by Informants (See MIOG, Part II, 23-8.)

(1) DOMESTIC TRAVEL - An SAC may authorize travel by an informant within the continental United States following coordination with the SAC, or in his/her absence, the ASAC, of the field office to be visited. SAC authorization is only required in instances where the informant is traveling on behalf of or at the behest of the FBI. Travel may not be approved by any other management or supervisory official within the field office. Normal travel within the continental United States should be confirmed by teletype to the affected divisions.

(2) INTERNATIONAL TRAVEL - All informants who travel to an extraterritorial jurisdiction, either on behalf of or at the behest of the FBI, regardless of the number or frequency of such travel, must adhere to the provisions of the "Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions." The approval mechanism necessary for informants to travel to extraterritorial jurisdictions is set forth in the aforementioned Attorney General Guidelines and may only be obtained on a request-only basis, not on a UACB basis.

EFFECTIVE: 12/20/93

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9-19-96 BY [REDACTED]

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||137-5| INFORMANT PARTICIPATION IN AUTHORIZED AND UNAUTHORIZED
CRIMINAL ACTIVITY

|An informant may not be authorized to engage in any activity that would constitute a crime under state or Federal law, if engaged in by a private person acting without the authorization or approval of an appropriate FBI and United States Attorney's Office representative, except as authorized by this section. For the purposes of this section, such activity is referred to as "authorized criminal activity."|

EFFECTIVE: 12/20/93

||137-5.1 Informant Participation in Authorized Criminal Activity
(See MIOG, Part I, 137-5.2(1) & 137-6(1).)|

(1) Approval for participation by an informant in authorized criminal activities of an ordinary nature (those not fitting the definition of extraordinary criminal activity in 137-5.1(2)), other than the routine purchase of stolen or contraband goods, requires authorization at the ASAC level or above. Participation in the purchase of stolen goods or contraband can be authorized at the level of the field supervisor or above. |For the purpose of these guidelines, drugs are contraband.| The authorizing official must make a written finding in advance of any such activity. This written finding must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination. In emergency situations, the ASAC or the appropriate Supervisory Special Agent may verbally authorize the activity and immediately thereafter document that authorization in the informant's main file. |The finding must state that: (See (3) below.)

(a) The activity is necessary to obtain information or evidence for paramount prosecutive purposes, to establish or maintain credibility or cover with persons associated with criminal activity in connection with the investigation, or to prevent or avoid the danger of death or serious bodily injury; or

(b) The need for participation in a criminal activity by an informant outweighs the seriousness of the conduct

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involved.

(2) Participation by an informant in authorized extraordinary criminal activity may only be made by the SAC, or in the SAC's absence, the ASAC, after consultation with and the approval of the United States Attorney. Additionally, the participation of an informant in any of these activities may constitute a sensitive circumstance, and therefore will require prior approval of the appropriate Section Chief, FBIHQ. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to FBIHQ and to the Assistant Attorney General in charge of the Criminal Division or his/her designee, in a form suitable to protect the identity of the informant. The United States Attorney's opinion should be confirmed in writing in such a manner as to protect the informant's identity. Extraordinary criminal activity is defined as that activity which may involve a significant risk of violence, corrupt actions by high public officials or severe financial loss to any victim. FBIHQ must be notified by teletype of such authorizations, as well as the concurrence of the United States Attorney. (Sensitive circumstances are discussed in detail at 137-4(21). (See (1) above & (3) below.)

(a) If the SAC reasonably determines that an emergency situation exists requiring an informant's participation in extraordinary criminal activities prior to being able to obtain the United States Attorney's opinion, the SAC may approve the participation on his/her own authority but shall immediately thereafter notify the United States Attorney, FBIHQ and the Assistant Attorney General, Criminal Investigative Division or his/her designee. Situations wherein the SAC could utilize such authority are: to protect loss of life or substantial property, to apprehend or identify a fleeing offender, or to protect the imminent loss of essential evidence. In such emergency situations, the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's Office before approving the informant's participation.

(3) Written findings made pursuant to 137-5.1(1) and (2) must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination, the dates for which the criminal activity has been authorized, the concurrence of the United States Attorney and a description of the anticipated criminal activity expected to take place. In emergency situations, the documentation should be done as soon as possible following the activity.

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(4) When it is anticipated that the informant will participate in authorized criminal activity incident to a Group I undercover operation, approval must be given in advance by an Assistant Director on the recommendation of the Criminal Undercover Operations Review Committee, except that the Deputy Director's approval is required for participation in authorized criminal activity involving a significant risk of violence or physical injury to individuals. All approvals must be recorded in writing.

(5) When approval is granted for an informant to participate in criminal activity, he/she will be instructed that under no circumstances are they to participate in any act of violence, initiate a plan to commit criminal acts or use unlawful techniques to obtain information for the FBI.

(6) The field office should, to the extent practicable, ensure that:

(a) The adverse effect of the activity on innocent individuals is minimized.

(b) The informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he/she will participate.

(c) The informant's participation in the activity is closely supervised by the FBI.

(d) The informant does not directly profit from his/her participation in the activity.

(7) Any proposal by a Confidential Source to engage in otherwise criminal activities in order to gather information changes the status of that individual from Confidential Source to informant.

(8) The alternate contacting Agent or second witnessing Agent must be present whenever the informant is briefed regarding the nature and extent of his/her authorized criminal activity unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(9) The SAC must review all such criminal activity by informants at least every 90 days. The SAC's review must be documented in the informant's main file or the appropriate control file.

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EFFECTIVE: 12/20/93

137-5.2 Informant Participation in Unauthorized Criminal Activity

(1) While carrying out an FBI assignment, an informant or Confidential Source has a unique relationship with the FBI; therefore, his/her participation in any unauthorized activity in connection with an FBI assignment, even of a minor character, must be carefully scrutinized. Hence, whenever it is determined that an informant or Confidential Source has participated in criminal activity which was not authorized pursuant to Section 137-5.1, the field supervisor will ensure that the appropriate law enforcement or prosecutive authorities are advised of any violations of law and make a written determination of whether continued use of the informant is justified. This determination should be documented in the informant's main file.

(a) Whenever a field office learns of the commission of an unauthorized criminal act by an informant or Confidential Source, FBIHQ must be notified immediately. A recommendation must be made whether to notify the appropriate state or local law enforcement or prosecutive authorities of any violation of law, as well as whether continued use of the informant or Confidential Source is justified. In situations where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the field office must advise FBIHQ of:

1. The facts and circumstances surrounding the informant's or Confidential Source's criminal violation;
2. The nature of the notification or request that was made to state or local law enforcement or prosecutive authorities, and the justification for the notification;
3. The nature of the information gained as a result of the violation; and
4. What use will be made of any information gathered through the violation of law.

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Thereafter, the FBIHQ will make a specific determination on whether to continue use of the informant or Confidential Source.

(b) A field office must notify FBIHQ whenever it learns of participation by an informant or a Confidential Source in an act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. A secure teletype must be submitted to FBIHQ setting forth the facts and circumstances concerning the informant's violent activity, what notification or request has been made to state or local law enforcement or prosecutive authorities, what use will be made of any information gathered through the activity; and, whether the office will continue to use the informant.

(2) In determining whether to notify appropriate Federal, state or local law enforcement or prosecutive authorities of an informant's/Confidential Source's criminal activity, the following factors should be considered:

(a) Whether the crime was completed, imminent or inchoate.

(b) The seriousness of the crime in terms of danger to life and property.

(c) Whether the crime is a violation of Federal or state law, and whether a felony, misdemeanor or lesser offense.

(d) The degree of certainty of the information regarding the criminal activity.

(e) Whether the appropriate authorities already know of the criminal activity and the informant's/Confidential Source's identity.

(f) The effect of notification on FBI investigative activity.

(3) Under no circumstances will the field office take any action to conceal a crime by an informant/Confidential Source.

(4) No factual representations or recommendations may be made regarding the disposition of any charges which may stem from unauthorized criminal conduct by the informant without prior FBIHQ authorization.

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EFFECTIVE: 12/20/93

||137-6| GUIDELINES AND INSTRUCTIONS TO BE DISCUSSED WITH
INFORMANTS

The following matters must be made clear to the informant at the earliest opportunity, but in no event, later than the second contact after being converted. These admonishments must be reiterated at least annually or at any time there is an indication that there is a need. The fact that the informant has been so advised or readvised must be documented in his/her file and indexed on the FD-237. The admonishments are as follows:

|(1)| ASSISTANCE VOLUNTARY - |The| informant's assistance is strictly voluntary and will not exempt him/her from arrest or prosecution |for| any violation of law except where such violations were approved by |the| appropriate FBI official |pursuant to| Section 137-5.1. |

|(2)| NOT EMPLOYEE OR |UNDERCOVER| AGENT - |The| informant is not and may not consider |or| represent himself/herself |to be an| employee or undercover Agent of the FBI.

|(3)| CONFIDENTIALITY - |The| informant's relationship must be maintained in the strictest confidence and |he/she| must exercise constant care to ensure that the relationship is not divulged to anyone.

|(4)| REPORT POSITIVE INFORMATION - |The| informant |must| report |all| positive information, |both| inculpatory and exculpatory, |as| promptly as possible.

|(5)| JURISDICTION - |An| informant who is providing information |relating to| specific criminal violations |is to be| advised of |the| pertinent |legal issues| related to the FBI's jurisdiction in that area. |

|(6)| ACTS OF VIOLENCE - Informants |will| not participate in acts of violence. When asked to participate in an act of violence or when an informant learns of plans to commit |an act| of violence, the informant |is to| take all reasonable measures to |discourage the| violence, and report the incident to his/her handling Agent at their earliest opportunity. |

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(7) UNLAWFUL TECHNIQUES - Informants will not use unconstitutional or unlawful techniques (e.g., breaking and entering, electronic surveillance, opening or tampering with the mail) to obtain information for the FBI.

(8) PLAN CRIMINAL ACTS - Informants will not initiate a plan to commit criminal acts.

(9) PARTICIPATION WITH SUBJECTS - Informants will not participate in criminal activities unless specifically authorized by the FBI.

(10) PAYMENTS ARE INCOME - If the informant is to be paid, he/she must be advised that the payments are taxable for Federal income tax purposes.

(11) GRANT OF CONFIDENTIALITY - The informant must be advised that the FBI will not disclose either his/her identity or the information provided by him/her on a confidential basis which tends to identify him/her, unless necessitated by compelling operational, litigative or prosecutorial considerations.

(12) CONFIDENTIAL SOURCE - Need only be advised that he/she is not acting as an agent or employee of the FBI and that under no circumstances should he/she use unlawful techniques to obtain information. The fact that a Confidential Source has been so advised must be documented in the main file and indexed on the FD-237.

EFFECTIVE: 12/20/93

137-7| RESTRICTIONS REGARDING THE DEVELOPMENT AND OPERATION
OF INFORMANTS (See MIOG, Part I, 137-3.1.1 (3) & (4),
137-3.2(1)(1) & Part II, 3-8.6.)|

| SAC authority is required to initiate an SI on an individual and FBIHQ authority is required to convert that individual to a fully operational privileged informant. For the purposes of this section, the following individuals are to be considered privileged informants: any person admitted to practice law in state court, any licensed physician, any practicing member of the clergy, and any member of the news media. Privileged informants that have been

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certified as to suitability must be authorized by the Assistant Director, Criminal Investigative Division (CID), before they can be converted to a fully operational informant. A field supervisor may approve the acceptance of information from a privileged individual on a one-time basis where the information is not privileged and is not collected at the behest of the FBI.

EFFECTIVE: 12/20/93

137-7.1 Restrictions Concerning the Development and Operation of Privileged Occupation Informants (See MIOG, Part I, 137-3.1.1(5), 137-3.2(3), 137-7.1.2 & Part II, 3-8.6.)

(1) Acceptance of information from a privileged individual on a one-time basis, where the information is not privileged and is not collected at the request of the FBI, may be approved by a field supervisor.

(2) The operation of a privileged informant may constitute a sensitive circumstance and therefore may require the prior approval of the appropriate Section Chief, FBIHQ.

(3) The privileged informant's value to FBI investigative interests should be evaluated in terms of possible Fifth and Sixth Amendment and conflict of interest issues. These individuals will only be approved for operation when it can be clearly articulated that their assistance will be of such significant value to the FBI's law enforcement mission that it outweighs the sensitivity of these areas of concern, and the assistance cannot be reasonably obtained in another manner.

(4) The Principal Legal Advisor must review the results of every contact with all privileged informants to ensure that all legal or ethical issues are identified and properly addressed.

(5) An individual in the privileged category may not be operated as an informant if he/she would be willing to provide information if his/her confidentiality were not protected.

(6) Privileged informants must be advised that:

(a) In seeking information from him/her, the FBI is

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not requesting him/her to violate any legal obligation of confidentiality.

(b) He/She should not furnish any information to the FBI which would violate such a privilege.

(c) The FBI will not knowingly give him/her any assignments which will cause a violation of his/her legal or ethical obligations.

The fact that these advisements were given must be documented in the informant's file.

(7) If it is determined that the informant has furnished information which violates his/her obligation of client confidentiality, such information should be recorded for the purpose of:

(a) Establishing that the information was received and that the issue was recognized.

(b) Documenting that no use was made of the information.

(c) Acknowledging that the information received was relevant to an FBI investigation, and that the investigation proceeded independent of such information.

(8) Use of privileged or other client-related information will be permitted if it is furnished regarding a situation wherein there could be loss of life, serious physical injury, destruction of property of substantial value, result in other serious consequences or which may contribute to the solution of a serious crime. If such a situation does develop, depending upon the exigency of the circumstances, the United States Attorney's Office and FBIHQ must be consulted prior to any use of the privileged information. If, because of exigent circumstances, consultation with the United States Attorney's Office and FBIHQ is not possible prior to the use of the information, both the United States Attorney's Office and FBIHQ must be advised immediately after that use. Only in the most urgent of circumstances should FBIHQ and the United States Attorney's Office prior concurrence not be obtained. Use of privileged information is to be thoroughly documented and will be allowed only in serious situations where to ignore the information could be construed as neglect of duty, notwithstanding the fact that such information may not be admissible in a court of law. (See MIOG, Part I.

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| 137-7.1.1(1).)|

| (9) | Privileged informants who have not made significant contributions | to FBI investigative matters | within any six-month period should be closed. This will preclude the continued operation of marginal privileged informants and limit | contacts with privileged sources to those which are fully justified by operational considerations. |

| (10) | Any change in a privileged informant's status in the community must be immediately brought to the attention of FBIHQ. These changes would include appointment or election to public office, or | extensive | media attention.

EFFECTIVE: 12/20/93

| 137-7.1.1 Additional Restrictions Regarding the Operation of Attorneys (See MLOG, Part II, 3-8.6.)

The operation of an attorney as an informant presents a significant risk of creating the perception of conflict of interest due to his/her obligation to fully represent his/her client. Due to the sensitivity of these circumstances, the operation of attorney informants must be in strict adherence with the following instructions:

| (1) | EXCEPT FOR EXTRAORDINARY SITUATIONS AS SET FORTH IN 137-7.1(8), NO INFORMATION | MAY | BE ACCEPTED FROM AN ATTORNEY INFORMANT REGARDING ANY OF HIS/HER CRIMINAL OR CIVIL CLIENTS REGARDLESS OF WHETHER OR NOT THE INFORMATION BEING PROVIDED IS DERIVED FROM A PRIVILEGED COMMUNICATION. The attorney informant should be specifically advised not to furnish any information, privileged or otherwise, concerning his/her clients. THIS RESTRICTION APPLIES TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT DURING THE ATTORNEY-CLIENT RELATIONSHIP AND DOES NOT APPLY TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT PRIOR TO OR SUBSEQUENT TO THE ATTORNEY-CLIENT RELATIONSHIP.

| (2) | No | payments | for services | are | to be made to an attorney with a criminal defense practice | without prior FBIHQ approval. |

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137-7.1.2 Additional Restrictions Regarding the Operation of
Members of the News Media (See MIOG, Part II, 3-8.6.)

In addition to the restrictions set forth in Section 137-7.1, information obtained from privileged informants who are members of the news media must be relevant to the FBI's investigative responsibilities. These individuals are not to be utilized for the purpose of controlling or manipulating the news media. Further, these individuals must be advised that the FBI will not knowingly influence or attempt to influence the editorial policy of the news media.

EFFECTIVE: 12/20/93

137-7.2 Restrictions Concerning the Operation of Specific
Individuals as Informants Based on their Employment
or Status

(1) The following informants may be authorized for operation by the SAC, or an individual designated by him/her, if the requirements set forth below are met and set forth in the opening teletype. This authorization must be noted in the opening teletype. Where such approval has been granted, the teletype may be submitted on a UACB basis. If the requirements cannot be met, these individuals may be opened on a request-only basis, not on a UACB basis.

(a) FEDERAL OR STATE PROBATION OR PAROLE.
Individuals on Federal or state probation or parole may not be operated as informants in violation of the conditions of their probation or parole. It is required that these conditions be determined during suitability and pertinence inquiries and the results of this determination be documented in the conversion teletype as described in 137-3.2. In those cases where an individual would be in violation of probation or parole restrictions, if operated as an informant, the field office should obtain the necessary probation or parole official's permission to operate the individual. This

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authorization must be documented in the informant's file. In those instances where an individual's probation or parole officer cannot be contacted, FBIHQ must be advised of the reason why this contact cannot be made, the need by the field office to use the individual and a request for FBIHQ to grant authority for use of the individual as an informant. Where the field office deems that it would be inappropriate to contact either the source's probation or parole officer or sentencing judge, they may request FBIHQ authorization to operate the individual without the aforementioned concurrences. Such a request must set forth sufficient facts to justify a deviation from the aforementioned policy.

The United States Parole Commission (USPC) requires that parolees and mandatory releasees agree in writing not to act as informants or in other similar capacities for a law enforcement agency. This requirement does not preclude accepting information from such persons as citizen complainants. These individuals may be considered for development as informants when the period of their parole has expired or in those cases wherein the field office has obtained the necessary parole official's permission and this is documented in the conversion teletype described in 137-3.2. The operation of any Federal parolee must be in compliance with the USPC rules and regulations.

(b) INMATES. The use of a cellmate informant, that is, one who has been placed in the cell for the purpose of gathering information regarding pending charges, requires the prior approval of FBIHQ and the concurrence of the prosecuting United States Attorney's Office. Cellmate informants may only be used as listening posts and may not question an accused or stimulate conversations concerning charged offenses. (See Legal Handbook for Special Agents, 8-3.3.2(1).) Any use of Federal inmates, or anyone in the custody of the U.S. Bureau of Prisons, even if held in a local holding facility, which results in the release or transfer of an inmate informant, in authorized criminal activity, or consensual monitoring involving the inmate wearing a body recorder, must have prior approval of Office of Enforcement Operations (OEO), Criminal Division, Department of Justice (DOJ). This approval should be requested by teletype to the FBIHQ substantive unit subsequent to opening and prior to utilization of the source. (If an informant becomes operational, the informant should be converted to a cooperative witness. Operational is defined as wearing a body recorder, the introduction of an undercover Agent, etc.) In order to facilitate the submission of the appropriate information in the request to DOJ, OEO, the following outline is provided so that a well-informed decision can be made:

1. Location of prisoner;

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2. Identifying data on the prisoner, e.g., date of birth, place of birth, Bureau of Prisons number, Social Security Number, and physical description;
3. Charges for which prisoner is incarcerated; including date, sentence, judicial district, and sentencing judge;
4. Copy of prisoner's arrest record or summary of the arrest record must be submitted;
5. The necessity for utilizing the prisoner in the investigation including what other techniques have been tried and why they have failed;
6. The name of the investigation and his/her role in the crime or organization under investigation;
7. Describe the prisoner's relationship or association with the target(s) under investigation;
8. Are the targets aware of the prisoner's incarceration status? If so, what is the prisoner's cover story to avoid jeopardizing his/her safety or the investigation?
9. Detailed explanation of the operational role the prisoner is to perform;
10. Describe the security measures to be taken to ensure the prisoner's safety, alleviate risk to the public, and prevent the prisoner's escape;
11. Length of time the prisoner will be needed in the activity;
12. Will the prisoner be needed as a witness and will he/she be considered for the Witness Security Program?
13. Will a prison redesignation be necessary upon completion of the operational role?
14. Will the prisoner remain in the custody of the investigative agency; be housed in jails or similar facilities at certain times; or will the prisoner be unguarded except for their own protection?

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15. The total number of law enforcement agents assigned to the security detail;

16. Has the request been endorsed by the appropriate Federal/state prosecutor? If not, provide a detailed explanation. Please provide name, phone number, and location of the Assistant United States Attorney endorsing the request.

17. An interim progress report should be submitted if a continuance, beyond date originally projected for conclusion, is necessary, and a detailed progress report should be submitted at the conclusion of activity;

18. Sealed court order(s) must be obtained after the request has been approved if the prisoner is unsentenced or on writ status.

(c) SWORN LAW ENFORCEMENT OFFICERS. The opening of a sworn law enforcement officer as an informant will be permitted only in those instances where the individual is providing information in investigations into corruption within his/her employing governmental entity. A statement regarding the specific nature of the information to be provided and the reason why the information cannot be furnished to his/her department must be included in the opening teletype.

(d) ELECTED/APPOINTED GOVERNMENT OFFICIALS (FEDERAL, STATE AND LOCAL). These individuals must be advised that the FBI will only accept information concerning alleged criminal violations of law and will not accept information concerning the political beliefs or personal lives of individuals within their governmental body, or the private or confidential deliberations of that body, unless violations of law are occurring. Further, the FBI will not knowingly influence or attempt to influence any action of the governmental body unless in furtherance of a compelling investigative interest and authorized by the appropriate FBIHQ official. The fact that these advisements were given must be documented in the informant's file and set forth in the opening teletype.

(e) UNION OFFICIALS. These individuals must be advised that the information which they provide is subject to the reporting provisions of the Employee Retirement and Income Security Act and that the FBI is not interested in, nor will it accept, information concerning legitimate union activities. Further, the FBI will not knowingly influence or attempt to influence any action of the union.

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(f) FINANCIAL INSTITUTION EMPLOYEES. These individuals must be briefed on the provisions of the Right to Financial Privacy Act and advised that the FBI will not knowingly accept information which violates the provisions of that Act.

(g) SCHOOL EMPLOYEES. These individuals must be advised of the provisions of Title 20, USC, Section 12326, commonly known as the Buckley Amendment. This statute generally prohibits educational institutions and their employees from releasing information from records which they maintain on individuals who have either attended or been employed by the institution. Such informants must be advised of the provisions of the law, even if the information they are providing is obtained independent of their employment.

(h) ACTIVE-DUTY MILITARY. The provisions of the Posse Comitatus Act, Title 18, USC, Section 1385, may prevent the use of these individuals in certain types of investigations. These individuals must be advised that the FBI will neither seek nor accept assistance or information which will violate the provisions of the Posse Comitatus Act.

(2) The operation of the following informants may only be authorized by FBIHQ, not on a UACB basis. The opening communication should clearly articulate that their assistance will be of such significant value that it outweighs the sensitivity of operating the individual and that the assistance cannot be reasonably obtained in another manner. (See MIOG, Part I, 137-3.1.1 (5).)

(a) WITNESS SECURITY PROGRAM (WSP). The operation of a current or past participant in the WSP requires the approval of the Department of Justice's Office of Enforcement Operations (OEO). (See MIOG, Part II, Section 27-13.2.) A teletype with the [REDACTED] as the subject must be submitted to the Criminal Informant Unit (CIU), FBIHQ, with the following information:

1. Name of source or person relocated (source may be a witness or a person relocated as a result of witness's cooperation such as a family member, boyfriend, or girlfriend).

2. Alias(es) used by the witness.

3. Approval of the appropriate headquarters' official of the concerned agency (will be given by the CIU when communication is forwarded to OEO).

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4. If the source is not a witness, relationship of source to the witness, and name of witness.

5. Identifying data on source, e.g., sex, date of birth, place of birth, Social Security Number, and Bureau of Prisons Register Number (if applicable).

6. Source's employment; if unemployed, how source is subsisting; and extent this activity jeopardizes source's livelihood.

7. Name(s) of target(s) of investigation and their role in the crime or organization under investigation.

8. Significance and/or scope of the criminal activity and target(s).

9. Source's relationship or association with the target(s) under investigation.

10. Necessity of utilizing source in investigation, including details about nature of use being requested.

11. Consideration of alternatives to source's use and indication of why they will not work.

12. Detailed account of source's involvement in criminal activity subsequent to being approved for WSP services.

13. Appraisal of whether request centers on source's new criminal involvement, and how source is aware of new criminal activity.

14. The benefit that source expects in return for his/her cooperation.

15. Statement as to whether source's activity requires him/her to testify.

16. Indication as to whether source completed testimony for which he/she was placed in the WSP. If known, district and sponsoring AUSA.

17. If known, details about other agencies' use of source since relocation.

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18. Probation or parole status of source (indicate whether U.S. Probation Office and U.S. Parole Commission should be notified).

19. Security measures to be taken to ensure source's safety and minimal risk to the public.

20. Use of electronic devices, body recorders, etc. (cooperative witnesses only).

21. Name of case Agent or Agent specifically responsible for safety of source.

22. Length of time source's assistance will be needed regarding this investigation.

23. Whether source is incarcerated; if so, location and whether prosecutor and/or judge should be avoided.

24. Whether the source will remain in custody of the FBI, be housed in jails or similar facilities at certain times, or whether source will be unguarded except for his/her own protection.

25. If the source is incarcerated, whether a prison redesignation will be necessary upon completion of activity.

26. Whether source is represented by counsel and whether counsel concurs with activity.

27. If applicable, whether activity has been endorsed by appropriate Federal/state prosecutor; if so, name, telephone number and location of prosecutor (cooperative witnesses only).

28. Whether source's activity will require submission of new WSP application and subsequent relocation.

29. Whether the source will be charged/indicted in this investigation.

(b) MINORS (INDIVIDUALS UNDER THE AGE OF 18).
In requesting authorization to use a minor as an informant, the field office must indicate whether parental consent has been obtained for his/her use. If such consent has not been obtained, state whether such consent can or will be obtained. If obtaining consent from his/her parents is not feasible, the field office must state the

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justification for use of such an individual in the absence of parental consent.

(c) BUREAU OF PRISONS (BOP) PERSONNEL. Utilization of BOP personnel requires approval of the Department of Justice's OEO. In submitting a request for review by OEO, the field must provide the appropriate FBIHQ substantive unit with the following information:

1. Name of BOP employee.
2. Location and job title of employee.
3. Necessity of utilizing the employee in the investigation. If other techniques are available, an explanation is required. Detail the activity in which the employee is to be engaged and the location and length of time the employee will be needed. Advise specifically whether the employee will be required to contact target(s), relatives, friends and associates outside the institution in connection with this investigation.
4. Name(s) of target(s) of the investigation and their role(s) in the crimes or organization under investigation.
5. Security measures to be taken to ensure the employee's safety.
6. Whether the employee will be needed as a witness.
7. Whether a job transfer will, or may, be necessary upon completion of the activity.
8. Whether the activity will jeopardize the employee's family, and if so, how.
9. Name(s), title(s) and location(s) of any BOP personnel and phone numbers with whom this matter has been, or will need to be discussed.

This does not apply to routine interviews of BOP personnel where the employee is not asked to perform an operational role in furtherance of an FBI investigation.

(d) COUNSELORS IN DRUG TREATMENT PROGRAMS. Federal law prohibits the opening of these individuals for the purpose of obtaining information on matters relating to the counseling of

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| patients.

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||137-8| PAYMENTS TO INFORMANTS| (See MIOG, Part II, 32-1.)|

| (1) The SAC is| personally responsible for all payments to informants. All payments must be requested by| the submission of a draft request form and a| memorandum to the SAC. | The memorandum| must contain the| case title, | total amount previously paid to the informant | during the Fiscal Year (FY), | the date the informant file| was| opened, and the information justifying| the| requested payment. These requests should be closely scrutinized to ensure that they are commensurate with| the| value| of the| information| received. This responsibility rests with the field office management.

| (2) | Payments to informants for services and expenses must be made from| his/her case| funds based on SAC or, in his/her absence, ASAC authority, and not from| the substantive| case fund payment authority. | In resolving whether a payment should be charged to the informant or substantive case fund, it is useful to determine who derived the primary benefit of the payment, and whether the expense was incurred as a direct cost of operating the informant. Where the payment is made for the purpose of conferring a benefit to the informant or is made as a direct result of operating the informant, it should be charged against the informant's case fund authority and not the substantive case authority. |

| (3) | The alternate contacting Agent or a second witnessing Agent must be present at all payments to an informant unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present. |

| (4) | An individual who has requested confidentiality may be paid one time for services rendered and/or expenses incurred under SAC authority without being opened as an informant. This one-time payment under SAC authority can be up to [REDACTED]. Should the person be paid a second time, he/she should be opened as an informant. This one-time payment policy may be waived by FBIHQ when necessary to maintain an individual for security or trial purposes. Payments to one-time nonsymbol sources are charged to the field office informant budget using the substantive case file number. Payments are therefore

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| made from the case authority. |

| (5) The SAC or, in his/her absence, an ASAC, | may approve payments to | an informant | for expenses in obtaining information, the performance of services, or information on a C.O.D. basis up to [REDACTED] per FY. | In situations where | an informant | will incur expenses, such as travel, in | connection with his/her operation or | in order to obtain information for the FBI, the SAC may authorize payment | of an advance | for these expenses prior to | the | expenses | actually | being incurred by the informant. | Where funds are advanced in this manner, the field office must ensure that the actual expenses incurred by the informant are determined and reconciled with the advance of funds. | When the total of such payments to an informant reaches [REDACTED] additional payment authority must be obtained from FBIHQ before any further payments or advances can be made. Subsequent requests for additional payment authority should be submitted in increments of [REDACTED] or the amount required for the current FY, whichever is less. Such requests may exceed [REDACTED] where operational considerations necessitate an enhanced authority level. In these situations, the request should set forth adequate justification for the enhanced authority level. |

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| (6) | The request for | an | additional [REDACTED] payment authority should be submitted by | secure | teletype | to the CIU, FBIHQ, under the pertinent | informant caption on a | request-only | basis. The teletype must include:

| (a) A specific request that an additional [REDACTED] payment authority be granted.

| (b) | The total amount paid to the informant to date for the current FY, broken down by services, expenses and total payments. |

| (c) A | concise summary of the information or services provided by the informant, | in chronological order, | for which he/she has been paid since the last authorization. This summary should include the title and character of each case, the general nature of the information or service provided by the source in the investigation, and a statement as to the value of the information or service provided by the | source, including statistical accomplishments attributed to the informant as a result of the information provided. | Immediately following this information, set forth a separate paragraph showing the dates of payments under the prior authorization and the amount paid on each date, divided into the amounts paid for services and the amounts paid for expenses. | For the benefit of the requesting

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Agent, this information is available in the field office through on-line inquiry of the Financial Management System (FMS).

(7) Payments to Informants by an Auxiliary Office (AO)

When an informant provides services to an office other than his/her Office of Origin (OO), care must be taken to record each payment using the informant's file number. This may be accomplished in one of two ways:

(a) If the individual is expected to provide services or information to another office for an extended period of time, close the informant file at the OO and reopen it at the new OO.

(b) If the individual is providing only temporary assistance, the AO may make payment(s) through the draft system using the informant's file number assigned by the OO up to the maximum amount authorized for the FY. The AO must coordinate with the OO to ensure that payments do not exceed the informant's authorization level.

(c) Note that payments to informants will be charged to the informant budget of the field office making the payment.

(8) Lump-sum payments

(a) Each field office is encouraged to submit requests for lump-sum payments for the informant at the conclusion of any case in which he/she has made significant contributions to FBI investigative matters. These requests must be personally approved by the SAC or, in his/her absence, the ASAC. The SAC and ASAC should closely review lump-sum requests to ensure that all payments are justified and that the amount requested is appropriate under the circumstances. Requests for lump-sum payments should be furnished to FBIHQ by teletype captioned with the informant's symbol number, sent to the attention of the CIU, FBIHQ.

(b) Furnish the title and character of the FBI case and all pertinent details which will justify a lump-sum payment. Each funding request concerning any investigative program will be considered strictly on the merits of the case and the significance of the informant's contributions to that investigation. The following issues must be addressed in any request for a lump-sum payment:

1. Significance of the investigation.

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2. Degree of assistance rendered by the informant. The following factors should be addressed:

- a. Whether the informant was responsible for the initiation of the case.
- b. Quality of the information furnished by the informant.
- c. Whether the information was available from other sources.
- d. Length of time which the informant devoted to the investigation.
- e. Whether the informant participated in consensual monitoring activities.
- f. Whether undercover Agents were introduced by the informant.
- g. Potential risk for violence toward the informant or his/her family.
- h. Whether the informant was able to continue his/her normal employment while assisting in the investigation.
- i. Whether the informant suffered any financial loss as a result of his/her cooperation.
- j. Value of seized or forfeited property obtained as a result of his/her cooperation.
- k. Statistical accomplishments attributed to information or assistance provided by this informant.
- l. Whether the informant will testify.
- m. Potential for long-term investigative contributions by the informant.
- n. If the informant is to testify, whether the Federal prosecutor concurs in the payment.
- o. Whether the informant has or will

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receive any payment for services or expenses from any other law enforcement agencies in connection with the information or services which he/she provided to the FBI.

(9) Regular Pay

Recommendations for informants to receive regular payments should contain full justification and a proposed maximum amount to be paid to the informant on a regular basis. Such requests should contain the same information as provided in a request for additional payment authority and should be submitted by teletype to FBIHQ. The request for regular payment authority should specify the length of time for which the authority is sought and the specific reasons why the individual should be paid on a regular basis rather than by SAC authority. Communications requesting renewal of regular payment authority must be submitted at least one week prior to the expiration of the currently authorized period.

(10) Receipts

(a) A receipt must be obtained from all informants at the time of each payment. The receipt is to be signed by the informant using his/her code name, and witnessed by the case Agent or alternate Agent and a witnessing Agent. Both the paying Agent and the witnessing Agent must sign the receipt for all informant payments. Approval for not obtaining a receipt would be rare and must have the personal endorsement of the SAC or, in his/her absence, the ASAC. In the event that a receipt cannot be obtained, a certification, signed by the paying Agent and witnessing Agent, may be submitted as documentation for the payment.

(b) If it becomes necessary to make a correction on a receipt, such corrections must be initialed by the informant using his/her code name initials, and not by the Agent.

(c) Receipts should be forwarded to FBIHQ in accordance with the provisions of the CONFIDENTIAL FUNDING GUIDE. A copy of the receipt attached to the request memo is to be maintained in the informant's main file.

(d) Where payments are to be made to a Spanish speaking informant, Form FD-777, Spanish/English Receipt for Informant and Informant Payments, should be executed to ensure that the terms and the amount of the payment are fully understood by the recipient.

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(11) A gift may be made to an informant in lieu of a payment for services with the prior approval of the SAC, or in his/her absence, the ASAC. In reviewing such requests, care must be taken to avoid the appearance of impropriety and to ensure that the gift is to be given for strictly operational reasons. Purchase of the gift must be charged to the file number of the informant being paid as a payment for services. Agents are not to accept gifts from informants. For restrictions on financial, business and other dealings with informants, refer to the Manual of Administrative Operations and Procedures, Part I, 1-14.1.

(12) If private individuals or representatives of private industries or insurance companies offer a reward to an informant as a result of information supplied by the informant, they should be provided the pertinent information furnished by the informant if he/she agrees. SAC approval is necessary before participating in such payments. If it is necessary for an Agent to be involved in the reward payment in order to protect the informant, the transaction must be fully documented and appropriate receipts obtained. These transactions must adhere to all informant payment requirements. FBIHQ should be advised of the details of all such transactions.

(13) Income tax considerations

(a) All informants who receive compensation from the FBI for their services must be advised that such compensation must be reported as income when filing Federal income tax forms or other appropriate tax forms. Complete details of any problems the informant has encountered with the taxing authorities should be promptly furnished to FBIHQ.

(b) Informants should set forth income received from the FBI on the Federal income tax return as income received from other sources for personal services. Internal Revenue Service (IRS) regulations exempt law enforcement agencies from filing IRS Form 1099 (Miscellaneous Income Statement) for payments made to an informant. However, FBIHQ will provide a statement of payments made to an informant, upon his/her request, to assist the informant in reporting his/her income to the IRS.

(14) Stipulations regarding payments made to witnesses

(a) In trials in which an informant or other individual was paid a sum of money, and is a prospective witness, FBIHQ will furnish receipts signed by the prospective witness when so ordered by the court. Original receipts and a set of reproduced

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copies will be transmitted to the field office in the district where the trial will take place. In order for FBIHQ to furnish these materials, the appropriate field office must furnish FBIHQ the following information:

1. Correct full name.

2. All aliases, code names, and symbol numbers.

3. First date of contact by your office.

4. Tabulation of all payments, broken down as to services and expenses. Although tabulations are not furnished to the Department, they must reflect all amounts contained in the FMS.

5. Listing of any advances, refunds and outstanding balance of advances. (See (b).)

6. Date of last contact by your office. (See (b).)

7. Whether the individual has been contacted or opened by any other field office. (See (b).)

(b) Where the informant has previously been used as a witness and tabulation of payments was prepared, information for items 137-8(14)(a) 5 through 7 need be given only from date of last trial in which the individual was used.

(c) Above information should be submitted by separate communication to the Accounting Section, Finance Division. Interdivisional correspondence should be addressed to FBIHQ with copies designated for interested offices.

(d) When an informant is to testify, the informant's financial condition is to be discussed with him/her to ensure that the informant has fulfilled his/her tax obligations as reasonably as possible. If the informant has received FBI payments for services, the informant is to be reminded that these payments are income. Any payments by other law enforcement agencies are to be fully addressed. Any information developed or known concerning potential tax problems is to be brought to the attention of the United States Attorney's Office.

(15) Receipt of unemployment compensation (See FCI Manual,

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| Part I, 134-4.7(8)(a).)|

| (a) At times, informants may temporarily lose their jobs and become eligible for unemployment compensation. Where unemployment regulations require listing of all sources of income as a prerequisite for unemployment compensation, an informant who is being paid by the FBI must comply with state laws. Informants must be alerted to those local requirements which may impact on them. |

| (b) Where state requires notification of FBI payments to informants that would necessitate disclosure of identity of the informant, the field office should consider discontinuing payments during the period of unemployment compensation benefits in order to protect his/her identity. |

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137-9 ADMINISTRATION OF INFORMANTS

(1) Each informant must be assigned a code name which is unique to him/her within the field office. The code name or pseudonym is assigned to the informant as a measure of additional security and must be utilized in signing payment receipts. The code name is to be utilized in place of the informant's true name in the field office payment records. Care must be taken to ensure that the choice of the code name does not tend to identify the informant's true name, occupation, or information which is unique to the informant.

(2) Upon the opening of an informant, all relevant data is to be entered into the Criminal Informant Management System (CIMS) within two business days. All other administrative information pertaining to the informant should be entered into CIMS as soon as it becomes available. The Criminal Informant Program Manager is responsible for ensuring that the data is entered into CIMS and that it is done in a timely manner.

(3) Upon entry in CIMS of the information from the opening memorandum concerning the informant in the suitability and pertinence inquiry, FBIHQ will place a "Wanted-Flash-Cancellation Notice" in the Criminal Justice Information Services Division. When the "Wanted-Flash-Cancellation Notice" is placed, the field office will be advised by FBIHQ of any National Crime Information Center (NCIC) inquiry about the informant. In the event there is no record,

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the field office will not receive a reply from FBIHQ. When the informant is closed, FBIHQ will automatically cancel any "Wanted-Flash-Cancellation Notice" which may have been placed. (See MIOG, Part II, 14-12.3.4.)

(4) Informants are not to be advised of their symbol number. Where an informant furnishes information which necessitates a change in the category designation (i.e., OC, C, D, WC, etc.), the symbol number previously furnished will remain the same; however, the suffix must be changed to indicate the appropriate program designation. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or to fulfill other existing needs.

(5) After entering the permanent symbol number from the opening memorandum into CIMS, subsequent communications should contain the informant's symbol number, rather than his/her true name. The informant's symbol number and true name should not appear on any communications which are not secure. All communications concerning an informant's development and/or operation must be submitted by secure teletype.

(6) If an informant was either born or previously domiciled outside the United States, the case Agent should consider sending a secure teletype to the appropriate Legat requesting a background check of the source.

(7) If it is determined that an individual is not suitable for use as an informant, he/she is to be immediately closed by the submission of a memorandum to the field informant file and entry of the data it contains in CIMS, to include a statement setting forth the specific reason for closing the individual and whether the individual should be considered for future use by the FBI.

(8) Upon the closing of an informant, the case Agent must prepare a memorandum stating whether the source's identity was ever made public, i.e., whether he/she ever testified in court. The purpose of this memorandum is to prevent unnecessary or overbroad disclosure of information provided by the informant through a Freedom of Information Act request. In the event that the informant did testify, the case Agent should set forth the general nature and subject matter of the testimony in the memorandum.

(9) Where it is necessary for an informant to be utilized in a field office other than his/her OO, the field OO should furnish

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the new OO with full background information, including a summary of information previously provided by him/her, descriptive data, payment records, mode of travel and any other information useful in the operation of the informant. Any information that reflects negatively upon the reliability of the informant is to be promptly furnished to the field office considering the use of his/her services. The new OO should ensure that the informant is closed in the original OO either prior to submitting an opening communication to FBIHQ or upon entering the information into CIMS.

(10) Whenever an individual is closed, regardless of his/her status, the field office must reinitiate an SI before they can again be operated as a fully operational informant. The opening communication should indicate that the individual is being reopened. The field office must use the same symbol number that was assigned in the previous SI when reopening an individual.

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137-10 INFORMANT COMMUNICATIONS (See MIOG, Part II,
10-10.5.1(2)(e); Correspondence Guide-Field, 2-11 &
3-19.)

(1) All correspondence relating to the development or operation of informants among field offices must be transmitted by secure teletype. The opening, conversion, closing, and extension of informants whose operation is not restricted by their occupation as in MIOG, Part I, 137-7.1 through 137-7.2, are to be documented by memoranda in the field office file. (See MIOG, Part I, 137-3.1.1(4), 137-3.1.1(5), & 137-3.1.2(2)). Any correspondence regarding additional payment authority, participation in extraordinary criminal activity, and unauthorized criminal activity are to be transmitted by secure teletype to FBIHQ. The only exceptions to this instruction are existing forms and FD-209s with accompanying inserts or FD-302s relating to investigative matters of interest to another field office. Surface mail and telephone conversations between field offices and resident agencies regarding informants should be strictly limited. All documents which either identify or tend to identify an informant or cooperative witness must be hand-carried by an Agent. All security concerns should be resolved in favor of hand-carrying sensitive information by an Agent.

(2) All correspondence among field offices and FBIHQ

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requesting payments to an informant, travel of an informant, or involving the operation of an informant, must be transmitted by secure teletype under the informant's symbol number caption and not under a substantive case caption.

(3) All information pertinent to FBI investigative responsibilities furnished by an informant must be promptly reviewed, evaluated, channelized, entered into CIMS and all other necessary action taken.

(4) In criminal cases positive information must be recorded either on investigative inserts or FD-302s. Positive information must not be recorded on FD-209s.

(a) USE OF INSERTS - Information provided by an informant that will not become testimony should be recorded on an investigative insert. The insert will contain the informant's symbol number and the date the information was provided. The original insert will be filed in the informant's subfile and a copy will be routed to the pertinent substantive case file. Information received on two or more substantive investigative matters must be recorded on separate inserts and filed only in the pertinent substantive investigative file. All information furnished by the informant must be filed in the informant's subfile.

(b) USE OF FD-302s - If the informant's information is of evidentiary value and likely to become the subject of testimony, the information must be recorded on an FD-302 in the same manner as if the information were received from any other witness. Three copies of the FD-302 will be prepared. The original of the FD-302 must reveal the identity of the informant, but the identity must be concealed on all copies. Also, the informant's file number must not appear on the original FD-302 or any copy. Transcripts of conversations of the informant will be handled in the same manner as an FD-302. If information from the informant is so singular in nature or reported in a manner which would tend to identify the informant, a succinct summary of the pertinent information should be filed in the substantive file. The following is an example of how an original FD-302 and copy should be prepared.

- ORIGINAL FD-302 -

- EXAMPLE -

(To be filed in informant's main file)

JOHN J. DOE, 123 Main Street, New York, New York,
furnished the following information:

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On March 12, 1984, he saw a green tractor trailer bearing Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

- COPIES OF THE ABOVE FD-302 -
- EXAMPLE -

(To be filed in informant's subfile and in the
substantive case file without the true name)

An informant, who has provided reliable information in the past, furnished the following information:

On March 12, 1984, he/she saw a green tractor trailer bearing Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

(c) FD-209 - An FD-209 will be prepared as a cover sheet for inserts which are filed in the informant's subfile. The FD-209s must not accompany inserts routed to the substantive case file. An FD-209 must also be prepared in triplicate for each FD-302. The FD-209 is used in serializing the FD-302 into the informant's main file (original FD-302 bearing the informant's true name), the

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informant's subfile (copy of FD-302 identifying the informant only as an informant) and the substantive case file (copy of FD-302 identifying the informant only as a Confidential Source). The FD-209 will be captioned with the informant's symbol number and bear the file number of the informant's file and the case caption of the substantive case. The following warning statement must appear on the FD-209: "Information contained herein was obtained confidentially. The informant's name is not to be disclosed in any form unless a conscious decision has been made to disclose his/her identity by an appropriate FBI official."

(d) The FD-209 will be used to document all negative contacts with an informant relating to his/her investigative activities as an informant. However, where the informant is contacted for the sole purpose of making payment for services and/or expenses, and they do not provide any information relating to investigative activities, there is no need to document the contact on an FD-209.

(5) Copies of FD-302s or inserts containing informant information which have been disseminated must not be filed in the dissemination control file. These FD-302s or inserts should be filed in the informant's subfile and the pertinent substantive file only. An FD-159 reflecting dissemination should be prepared. Copies should be placed in the informant's main file, and the field office dissemination control file.

(6) Informant information utilized in affidavits for Title III applications, search warrants, complaints, or any other court document must be reviewed by the field supervisor to ensure that the informant information in the document is contained in an insert or FD-302, in both the informant and substantive case files. On the file copy of the legal document in the substantive case file, the case Agent must note the substantive case file, serial number and page of the FD-302 or insert where the informant information can be found which was used in support of the legal document. This notation should be placed in the margins next to the informant's information in the legal document.

(7) Characterizations of informants utilized in affidavits or other legal documents described above should be updated at the filing of each legal document in which an informant's information is used. The serial number of the legal document containing the characterizations (from the substantive case file) must be documented in the informant's main file. This documentation is indexed to the FD-237 and is used in support of statistical accomplishments.

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(8) All positive information obtained from an informant operated by one field office and which pertains to investigative matters in another field office must be immediately transmitted to that field office. Appropriate copies of FD-209s with accompanying inserts or FD-302s containing that information are to be sent to that field office as enclosures to an airtel under the substantive case caption. Copies of these outgoing communications must be maintained in the informant's main file.

(a) Those FD-209s and accompanying inserts or FD-302s are to be sent to the personal attention of the SAC, or his/her designee, in a sealed envelope. In instances where an entire informant's file, or a substantial portion thereof, is required in another field office, the file should be hand-carried by an Agent.

(b) In a situation wherein an informant is being temporarily operated by an office other than his/her OO, original FD-302s in which the informant is identified will be hand-carried by an Agent in a sealed envelope to the SAC of the informant's OO for inclusion in the informant's file. Nothing in or on the envelope should identify the FD-302s as being connected to an informant matter. The sending office will, however, advise the OO by teletype under the source's symbol number that the FD-302s are being sent.

(c) Any transmission by facsimile of any true name FD-302 or other document which tends to identify the informant must be done by secure facsimile.

(9) All statistics obtained as a result of an informant's information should be claimed on an FD-209 and this FD-209, with nothing attached, should be placed in the informant's main file. The FD-209, containing the substantive case title, file number and statistic claimed, should be indexed to the FD-237.

(10) In instances where a criminal informant reports information pertinent to the FBI's foreign counterintelligence or international terrorism mission, a Subfile B is to be created to maintain that information. The Subfile B is to be appropriately classified. Subsequently, the information should be disseminated to the proper substantive FCI/IT file. (See 137-11 (4)(c).)

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137-11 INFORMANT FILES AND INDICES (See MAOP, Part 11, 2-5.1.)

(1) A separate and secure room is to be utilized for the maintenance of all informant and cooperative witness indices and pending informant and cooperative witness files. Where possible, all closed informant files should also be maintained in this room or otherwise maintained in a secure and locked condition. All pending and closed informant files are to be maintained under the personal authority of the SAC or a person designated by the SAC. Access to this room will be limited to necessary personnel and this space should be locked at all times when unattended. A log is to be maintained on persons requesting and reviewing informant files. Authority to review an informant's file should be restricted to the SAC, ASAC, the case Agent's supervisor, the Principal Legal Advisor, the case Agent, the alternate Agent, the co-case Agent, the Informant Coordinator, the CIMS Analyst and confidential file room clerk. The file will not leave the room, except for the express purpose of a file review by the supervisor or the handling Agent. Logs must have columns for "date," "file number," "signature of person reviewing file," and "time file charged out" and "in." Informant files should not be located outside this room after close of business hours.

(2) Individual files are to be maintained on all active informants and should be carried as pending. These files, as well as the closed informant files, should be bound in the green file cover and file back (designated as an FD-245a). These files are to be assigned to the Agent who is personally responsible for the development and operation of the informant.

(3) An FD-237 is to be used in the nature of a table of contents or index to indicate where particular data can be found in the file. The form should be carried as the top document in the informant's main file and should not be serialized. This form should be updated regularly as the required information changes.

(4) All informant files should be separated into two sections. Administrative and identifying data is to be maintained in the main file and all information, reports, etc., furnished by the informant should be maintained in the subfile.

(a) Main file items:

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- Correspondence requesting approval to open
- 1A file items (photograph, fingerprint card, etc.).
- Indices checks (Local and FBIHQ).
- NCIC inquiry and response.
- Criminal Justice Information Services Division

Report.

- Local arrest records.
- Credit checks.
- FD-302s in which the identity of the informant has been revealed.
- Inserts in which the identity of the informant is revealed.
- FD-209s used to claim statistical accomplishments.
- FD-209s used as a cover page for above-mentioned FD-302s.
- FD-209s containing administrative information that may tend to identify the informant.
- Payment request memos.
- Draft request forms.
- Signed payment receipts.
- Requests to FBIHQ for additional payment authority.
- Requests to FBIHQ for lump-sum payment authority.
- All other administrative-type correspondence.
- Any correspondence that identifies or tends to identify the informant.
- Documentation authorizing criminal activity.

(b) Subfile A items:

- FD-302s in which the identity of the informant is concealed.
- Inserts which conceal identity of the informant.
- FD-209s used as cover page for inserts.
- Negative contact FD-209s.

(c) Subfile B items:

- Classified FD-302s in which the identity of the informant is concealed.
- Classified inserts which conceal identity of the informant.

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- Classified FD-209s used as cover page for inserts. (See 137-10(10).)

(5) Symbol number and code name.

(a) Each informant should be assigned a permanent symbol number and code name unique to the field office. FBIHQ will be advised of the symbol number and the informant's code name through data entry in CIMS. The code name or pseudonym is assigned to the informant as a measure of additional security and is to be utilized in signing payment receipts. The code name is utilized in place of the informant's true name in the field payment ledger.

(b) The informant is not to be advised of his/her symbol number.

(c) The prefix of the symbol number should consist of the appropriate field office abbreviation. The suffix of the symbol number should identify the category of information which the informant is providing.

(d) Although the informant may subsequently furnish information requiring a change in designation, the number previously assigned will remain the same; however, the suffix should be changed to indicate the appropriate designation, i.e., C, OC, TE, WC, DT, D or CS. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or other need exists.

(e) After FBIHQ has been advised of the permanent symbol number through data entry in CIMS, and documented in the opening memorandum in the source file, subsequent communications should contain the informant's symbol number rather than the true name. The informant's symbol number and true name should not appear on any communications which are not secure. Any communications submitted to FBIHQ in connection with the operation or administration of the informant should be captioned under the assigned symbol number and not the substantive case caption.

(f) The use of symbol numbers should be restricted to informants and should not be used for any other investigative technique.

(6) Indexing

(a) The informant's true name, aliases and other

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identifying data are to be indexed into CIMS. A manual index is to be maintained in the confidential file room for those informants indexed prior to the establishment of CIMS.

(b) No indexing to the general indices should be done from individual informant files. All such indexing should be done from substantive files.

(7) Indices

(a) All offices should maintain an alphabetical name index, a symbol number index, and a code name index for all informants not maintained in CIMS. These indices should be maintained as above in a separate and secure manner under the authority of the SAC or person designated by that official.

(b) SACs should ensure that all necessary searching of these separate indices is conducted.

(c) The result of a search of these indices, either positive or negative, should not be handled in a routine manner similar to a general indices review. Good judgment should be utilized consistent with security concerns. Notification of an informant reference should be coordinated with the appropriate supervisor having responsibility for the mail being searched.

(d) Other indices may be maintained in the confidential file room as deemed necessary by the office for convenience such as an index of informants in other divisions or an index broken down by activity or geographical area. Any such indices should be given the same security as the alphabetical, symbol number and code name indices.

(8) A Form FD-675 entitled, "Supervisor's 60-Day Informant File Review Log" is to be placed immediately underneath the FD-237 in the main informant file. It is to be used to document the Supervisor's review every 60 days as mandated by Bureau policy. It should not be serialized or destroyed. Place a new FD-675 on top of the old form if there is a need for additional certification space.

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137-12 ON-SITE REVIEWS

(1) To enhance the administrative efficiency of the Criminal Informant Program (CIP) at FBIHQ and in the field offices, an on-site review will be conducted periodically of the CIP of each field office.

(2) The purpose of the on-site review is to afford the Criminal Informant Unit an opportunity to review the field CIP from an overall program perspective, by identifying areas which may need attention, and to provide CID with the results of the on-site findings. Each informant's reliability and the action taken when reliability is in question are to be considered during the on-site review. This on-site review should not only be concerned with the number of informants but also with the quality of information furnished, the priority of the investigative programs in which information is provided, and the degree of compliance with FBI and Attorney General policies and guidelines. An on-site review should enable the Criminal Informant Unit to determine whether the field CIP is capable of supporting the investigative programs of the field office, to ensure the worthiness of each informant for continued operation, and to confirm that all informants are being operated within established operational parameters.

(3) Prior to an on-site review, each field office should rate each informant utilizing the scale set forth below by individual investigative program based on information furnished and provide an aggregate overall evaluation for each informant. The evaluation should be based on both contributions consisting of statistical accomplishments and intelligence concerning investigative efforts.

EXCELLENT

Furnishes information of high quality on a continuing basis which usually could not be obtained through other means and which contributes significantly to the FBI's investigative and intelligence gathering efforts.

VERY GOOD

Regularly furnishes quality information which contributes measurably to the investigative and intelligence-gathering efforts of the Bureau.

GOOD

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Furnishes sufficient worthwhile information to remain active and qualified as an informant.

FAIR

| Furnishes | some | information of value for an extended period.

POOR

Informants in this category have furnished no information of value and consideration should be given to closing them.

NEW

Too new to evaluate.

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| 137-13 | ATTORNEY GENERAL'S GUIDELINES ON THE USE OF
INFORMANTS

| (1) Attorney General guidelines on FBI use of informants and confidential sources are included below in these 137 guidelines.

| (2) These guidelines on the use of informants and Confidential Sources are set forth solely for the purpose of internal FBI guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the FBI. |

"ATTORNEY GENERAL'S GUIDELINES ON FBI USE OF
INFORMANTS AND CONFIDENTIAL SOURCES"

"A. Introduction

"(1) The courts have recognized that the government's use of informants and confidential sources is lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, use of informants and confidential sources to assist in the investigation of criminal activity may involve an

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element of deception, intrusion into the privacy of individuals, or cooperation with persons whose reliability and motivation can be open to question. It is proper for the FBI to use informants and confidential sources in appropriate investigations, but special care must be taken to carefully evaluate and closely supervise their use, and to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Though informants and confidential sources are not employees of the FBI, their relationship to the FBI can impose a special responsibility upon the FBI when the informant or confidential source engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

"(2) To implement these guidelines, the FBI shall issue detailed instructions to all Special Agents responsible for dealing with informants and confidential sources.

"B. Definition of Confidential Source, Informant, and Continuing Basis

"(1) A confidential source, under these guidelines, is any person or entity furnishing information to the FBI on a confidential basis, where such information has been obtained as a result of legitimate employment or access to records and is provided consistent with applicable law.

"(2) An informant, under these guidelines, is any other person or entity furnishing information to the FBI on a confidential basis.

"(3) An informant or confidential source used on a "continuing basis" is one providing information or substantial operational assistance with some degree of regularity. This may be as infrequent as a few times per year, or as frequent as several times per week.

"C. General Authority

"(1) An informant or confidential source may be asked to provide information already in his possession, to provide information which comes to his attention, or to affirmatively seek out information, concerning criminal conduct or other subjects of authorized investigative activity. An informant or confidential source may also be asked to provide operational assistance to the FBI, including furnishing resources or facilities.

"(2) The FBI may only use informants or confidential sources in furtherance of its authorized investigative activities and law

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enforcement responsibilities. Informants and confidential sources may not be used or encouraged to commit acts which the FBI could not authorize for its Special Agents.

"D. Required Findings of Suitability and Pertinence
For Any Informant or Confidential Source Used on
a Continuing Basis, Any Informant Authorized to
Associate in Activities, Participation in Which
Otherwise Would be Criminal, and Any Informant
or Confidential Source Providing Substantial Operational
Assistance in an Undercover Operation

"(1) No informant or confidential source may be used to provide information on a continuing basis, no informant may be authorized to associate in activities, participation in which otherwise would be criminal, nor may any informant or confidential source be used to provide substantial operational assistance in an undercover operation, unless the supervisory FBI official designated below has made written findings:

"(a) that the informant or confidential source appears suitable for such use, and

"(b) that the information likely to be obtained or the operational assistance to be provided is pertinent to authorized FBI investigative activity or law enforcement responsibilities.

"Findings of suitability and pertinence shall be made by a supervisory agent designated by the Director except that in the case of a Domestic Security Investigation, the findings shall be made by a Headquarters official designated by the Director.

"(2) A finding of suitability should be preceded by a preliminary inquiry concerning the proposed informant or confidential source. A preliminary inquiry may only be used to assess suitability. It may not be used to develop information concerning an individual for the purpose of inducing him to become an informant or confidential source. A preliminary inquiry can use any lawful investigative technique except mail covers, access to tax information, any technique requiring probable cause, such as mail openings, nonconsensual electronic surveillance, or searches.

"(3) In determining the suitability of an informant or confidential source, the FBI shall weigh and consider the following factors:

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"(a) the nature of the matter under investigation and the importance of the information or assistance being furnished;

"(b) the seriousness of past and contemporaneous criminal activity of which the informant or confidential source may be suspected;

"(c) the motivation of the informant or confidential source, including any consideration sought from the government for his cooperation;

"(d) the likelihood that the information or assistance which an informant or confidential source could provide is not available in a timely and effective manner by less intrusive means;

"(e) the informant's or confidential source's reliability and truthfulness, or the availability of means to verify information which he provides;

"(f) any record of conformance by the informant or confidential source to Bureau instructions and control in past operations; how closely the Bureau will be able to monitor and control the informant's or confidential source's activities insofar as he is acting on behalf of the Bureau;

"(g) the risk that use of informants or confidential sources in the particular investigation may intrude upon privileged communications, or inhibit the lawful association of individuals or expression of ideas; and

"(h) any risk that use of informants or confidential sources may compromise an investigation or subsequent prosecution, including court-ordered disclosures of identity which may require the government to move for dismissal of the criminal case.

"(4) A preliminary inquiry and written determination regarding suitability and pertinence should be completed within 120 days from the date the inquiry began. FBI Headquarters may authorize one or more extensions beyond 120 days, stating in writing the facts and circumstances precluding an earlier determination.

"(5) Determinations of suitability and pertinence shall be reviewed at least every 90 days by a field supervisor and at least annually by FBI Headquarters.

"(6) If it is determined not to use a person or entity as an

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informant or confidential source, any information collected about the person or entity during the preliminary inquiry without the consent of the person or entity shall be promptly destroyed, unless it is or may become pertinent to authorized investigative activity or the person is a potential witness in a criminal prosecution. Any decision not to destroy all information about the person or entity shall be recorded with explanatory facts and circumstances in an investigative case file and shall be reviewed periodically by the SAC or designated field supervisor.

"(7) At any time the FBI learns an approved informant or confidential source is no longer suitable to provide information or operational assistance, his relationship with the Bureau shall be promptly terminated. FBI Headquarters shall maintain records of informant and confidential source terminations, including a detailed statement of the reasons for each termination. These records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources.

"E. Required Instructions to

"(1) Any Informant used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, Any Informant or Confidential Source Suspected of Substantial Involvement in Unauthorized Past or Continuing Criminal Activities, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation:

"Each such person shall be advised that his relationship with the FBI will not protect him from arrest or prosecution for any violation of Federal, State, or local law, except where the FBI has determined pursuant to these guidelines that his association in specific activity, which otherwise would be criminal, is justified for law enforcement; and that in carrying out his assignments he shall under no circumstances participate in any act of violence, initiate or instigate a plan to commit criminal acts, or use unlawful techniques to obtain information (e.g., illegal wiretapping, illegal mail openings, breking and entering, or criminal trespass). Such persons shall be readvised when necessary, at least annually, and at any time there is reason to suspect they are engaged in serious criminal activity.

"(2) Other Confidential Sources Used on a Continuing Basis:

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"In the place of the instructions in paragraph E(1) above, each such confidential source shall be advised that he is not acting as an agent or employee of the FBI, that he should use only lawful techniques to obtain information, and that he should provide information only in accordance with applicable law.

"(3) When the FBI learns that persons under investigation intend to commit a violent crime, any informants or confidential sources used in connection with the investigation shall be instructed to try, to the extent practicable, to discourage the violence.

"(4) A written record shall be made in each informant or confidential source file of the instructions noted above promptly after they are given.

"F. Authorized Participation by Any Informant in Criminal Activities

"An informant or confidential source shall not be authorized to engage, except in accordance with this paragraph, in any activity that would constitute a crime under state or federal law if engaged in by a private person acting without the authorization or approval of an appropriate government official. For purposes of this paragraph, such activity is referred to as 'otherwise criminal' activity.

"(1) A determination that participation by an informant in otherwise criminal activities is justified shall be made only by the supervisory FBI official designated in paragraphs F(2) and (3) below on the basis of his written finding that

"(a) the conduct is necessary to obtain information or evidence for paramount prosecutive purposes, to establish and maintain credibility or cover with persons associated with criminal activity under investigation, or to prevent or avoid the danger of death or serious bodily injury;

"(b) this need outweighs the seriousness of the conduct involved.

"(2) For purposes of these Guidelines there are two types of otherwise criminal activities -- 'extraordinary,' i.e., those involving a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim, and 'ordinary.' A determination that participation in activities which, otherwise would be 'ordinary' criminal activities is justified as part of an informant's assignment shall be made by a field office supervisor or higher level official, and shall be recorded in writing

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in advance of any such activity, except that oral approval may be given in an emergency situation where confirmed thereafter in writing as soon as possible. The SAC shall review all such criminal activity by informants at least every 90 days.

"Determinations authorizing participation in such activities may concern a single instance of otherwise criminal activity or a specified group of otherwise criminal activities.

"The written determinations shall be submitted annually to Headquarters for review, and shall be subject to review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants.

"(3) A determination that participation in activities which otherwise would be 'extraordinary' criminal activities -- is justified as part of an informant's assignment shall be made only by the SAC and only after the SAC consults with and obtains the approval of the United States Attorney. The consultation shall be in a form suitable to protect the identity of the informant. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to a senior Headquarters official designated by the Director, and to the Assistant Attorney General in charge of the Criminal Division or his designee, in a form suitable to protect the identity of the informant.

"If the SAC reasonably determines that an emergency situation exists requiring informant participation in activities which otherwise would be extraordinary criminal activities before approval by the United States Attorney can with due diligence be obtained, in order to protect life or substantial property, to apprehend or identify a fleeing offender, or to prevent the imminent loss of essential evidence, the SAC may approve the participation on his own authority but shall immediately notify the United States Attorney, the appropriate senior Headquarters official, and the Assistant Attorney General in charge of the Criminal Division or his designee. In such an emergency situation the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's office before approving participation.

"(4) Upon approving any participation in otherwise criminal activity, the FBI shall repeat to the informant the instruction specified in paragraph E(1).

"The FBI shall also seek, to the extent practicable, to provide:

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"(a) that the adverse effect of the activity on innocent individuals is minimized;

"(b) that the informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he will participate;

"(c) that the informant's participation in the activity is closely supervised by the FBI; and

"(d) that the informant does not directly profit from his participation in the activity.

"(5) Any proposal by a confidential source to engage in otherwise criminal activities in order to gather information changes the status of that individual from confidential source to informant.

"G. Notifying Appropriate Authorities of Unauthorized Criminal Activity by Any Informant or Confidential Source

"(1) While carrying out an FBI assignment, an informant or confidential source bears a relationship to the FBI such that his participation in any unauthorized activity in connection with the assignment associated with criminal activities, even of a minor character, should be carefully scrutinized and severely regarded. Hence, whenever a Special Agent learns that an informant or confidential source has participated in a criminal activity in connection with an FBI assignment which was not authorized pursuant to the procedures of paragraph F of these guidelines, the Special Agent shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In exceptional circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall promptly notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, what use will be made of any information gathered through the violation of law, and whether continued use will be made of the

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informant or confidential source.

"(2) Informants who are in a position to have useful knowledge of criminal activities often are themselves involved in a criminal livelihood. It is recognized that in the course of using an informant or confidential source, the FBI may receive limited information concerning a variety of criminal activities by the informant or confidential source, and that in regard to less serious participation in criminal activities unconnected to an FBI assignment, it may be necessary to forego any further investigative or enforcement action in order to retain the source of information. However, whenever a Special Agent learns of the commission of a serious crime by an informant or confidential source, he shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall immediately notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, and what use will be made of any information gathered through the violation of law. A determination to then continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division or his designee.

"(3) Each FBI field office shall immediately notify FBI Headquarters whenever it learns of participation by an informant or a confidential source in a serious act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. Detailed records shall be maintained at Headquarters regarding each instance of informant or confidential source participation in a serious act of violence, and these records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources. A determination to continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division.

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"(4) In determining whether to notify appropriate state or local law enforcement or prosecutive authorities of criminal activity by FBI informants and confidential sources, the FBI shall consider:

"(a) whether the crime is completed, imminent or inchoate;

"(b) the seriousness of the crime in terms of danger to life and property;

"(c) whether the crime is a violation of federal or state law, and whether a felony, misdemeanor, or lesser offense;

"(d) the degree of certainty of the information regarding the criminal activity;

"(e) whether the appropriate authorities already know of the criminal activity and the informant's or confidential source's identity;

"(f) the effect of notification on FBI investigative activity.

"(5) Under no circumstances shall the FBI take any action to conceal a crime by one of its informants or confidential sources.

"H. Informants and Confidential Sources Under the Obligation of a Legal Privilege of Confidentiality or Affiliated with the News Media

"(1) A person who is under the obligation of a legal privilege of confidentiality or who is affiliated with the news media may be used as an informant or as a confidential source only after express approval in writing by the Director or a designated senior Headquarters official, except that a field office supervisor may approve one-time receipt of information not collected at the request of the FBI where the particular information is unprivileged.

"The FBI shall promptly give written notice, or oral notice confirmed in writing, to the Assistant Attorney General in charge of the Criminal Division or his designee of any such Headquarters authorization. The notice shall include sufficient information to allow meaningful review, and shall set forth the reasons why the individual should be used as an informant or confidential source.

"(2) Any such person approved as an informant or confidential source shall be advised by the FBI that in seeking information from

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him, the FBI is not requesting and does not advocate breach of any legal obligation of confidentiality. A record shall be made and kept in the informant or confidential source file when the advice has been given. This advice shall be provided before accepting information on a continuing basis.

"(3) If, despite the advice to the informant or confidential source that revelation of privileged information is not requested or advocated, he offers to provide information that is privileged or arguably privileged, the offer shall not be accepted unless a field office supervisor determines that serious consequences would ensue from rejection of the offer, such as physical injury to an individual or severe property damage. A report concerning such information and the circumstances that warranted its acceptance shall be promptly forwarded to FBI Headquarters.

"If the information is spontaneously provided by the informant or confidential source, without any offer that would alert the Special Agent to the nature of the information, in circumstances which do not meet the standard serious consequences, the information may be recorded in suitable form for the purpose of establishing that the problem was recognized and that no use was made of the information in the conduct of any investigation.

"(4) Regardless of state law, the procedures of this section must be followed for any licensed physician, any person admitted to practice law in a court of a state, any practicing clergyman, and any member of the news media.

"1. Infiltration of Organization Activities by Informants
or Confidential Sources Used on a Continuing Basis

"(1) The lawful activities of legitimate organizations are, of course, not subject to investigation. However, individual members of such organizations may be independently involved in criminal activities. In order to assure that the privacy of constitutionally-protected activities will be respected, the FBI should carefully regulate use of informants and confidential sources who will make use of affiliations with legitimate organizations in order to gather information concerning the activities of individual members.

"In particular, when, to obtain information,

"(a) an informant or confidential source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or confidential source's

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formal affiliation will give him continued access to nonpublic information related to the legitimate purposes of the organization; or

"(b) an informant or confidential source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities,

The determination to use the person as an informant or confidential source on a continuing basis shall be made by the ASAC or SAC.

"(2) In determining whether the use of such an affiliated person as an informant or confidential source on a continuing basis is appropriate, the ASAC or SAC should consider:

"(a) the likelihood of responsible behavior by the informant or confidential source during the course of his organizational membership;

"(b) the ability of the FBI to focus the informant's or confidential source's reporting on members of the organization involved in criminal activities and to minimize adverse impact on innocent members of the organization; and

"(c) whether the use of the informant or confidential source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

"(3) In approving the use of such an affiliated person as an informant or confidential source on a continuing basis, the ASAC or SAC shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"(4) Nothing in this paragraph limits the authority of the FBI to conduct otherwise proper investigations of illegitimate organizations or organizations engaged in unlawful activities. See the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, and on Domestic Security Investigations." [(See MIOG, Introduction, Section 1-3 for updated AG Guidelines.)]

"J. Minimization in Domestic Security Investigations

"In approving use of an informant or confidential source to

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infiltrate a group under investigation as part of a Domestic Security Investigation, or in recruiting a person from within such a group as an informant or confidential source, an FBI Headquarters official shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"K. Persons Represented by Counsel

"Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically an applicable law and Department procedure.

"L. Coordination with United States Attorneys and Other Federal Prosecutors.

"In any matter presented to a United States Attorney or other federal prosecutor for legal action (including prosecution, grand jury investigation, application for a search warrant, or application for a wiretap), where the matter has involved the use of an informant or a confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature and scope of the informant's or confidential source's participation in the matter.

"If the FBI deems it necessary to withhold certain information to protect the informant's or confidential source's identity from possible compromise, it shall inform the prosecutor of the general nature of the information that is being withheld.

"M. Compensation for Informants and Confidential Sources

"(1) The FBI may pay informants and confidential sources a reasonable amount of money or provide other lawful consideration for information furnished, services rendered, or expenses incurred in authorized investigative activity. No payment of money or other consideration, other than a published reward, shall be conditioned on the conviction of any particular individual.

"(2) In investigations involving serious crimes or the expenditure of extensive investigative resources, the FBI may

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compensate informants or confidential sources with an extraordinary payment in excess of \$25,000. The Attorney General shall be informed of any such extraordinary payment as he deems necessary.

"(3) Where practicable, compensation agreements with informants or confidential sources in connection with a significant FBI undercover operation shall provide that compensation will depend on compliance with the obligation of confidentiality for investigative information, and shall further provide that any profits derived from a violation of the obligation shall be forfeited to the United States.

"N. Reservation

"These guidelines on the use of informants and confidential sources are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the Department of Justice."

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SECTION 139. INTERCEPTION OF COMMUNICATIONS

[[139-1 STATUTES

Title 18, USC, §§ 2510, 2511, 2512, 2513 (Public Law 90-351, Omnibus Crime Control and Safe Streets Act of 1968, as amended by Public Law 99-508, the Electronic Communications Privacy Act of 1986); Title 47, USC, § 605 (Communications Act of 1934, as amended); Title 47, USC, § 501, (Penalties for violation Title 47, USC, § 605).

[139 1.1 Title 18, USC, § 2510 - Definitions

(1) Wire Communication - Any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) Oral Communication - Any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) Electronic Communication - Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. "Electronic communication" is also specifically defined to exclude a wire or oral communication. Any and all forms of electronic communications, unless specifically exempted, are subject to the provisions of the statute.

For additional definitions refer to Chapter 119 of Title 18, USC.

[139-1.2 Title 18, USC, § 2511 - Interception and Disclosure of Wire, Oral or Electronic Communications Prohibited

This section prohibits the interception and disclosure of wire, oral or electronic communications except as otherwise specifically addressed in Chapter 119 of Title 18, USC. Any person is in violation if that person-

(1) intentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept, any wire, oral or electronic communication;

(2) intentionally uses, endeavors to use or procures any other person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication, in circumstances detailed under this Section of Title 18, USC;

(3) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection; or

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(4) intentionally uses or endeavors to use, the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection.

139-1.2.1 Exceptions

(1) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire, oral or electronic communication, to intercept, disclose or use that communication in the normal course of his/her employment while engaged in any activity which is a necessary incident to the rendition of his/her service or to the protection of the rights or property of the provider of that service, except that a provider of wire or electronic communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks. Refer to Section 2511 for specific exemptions;

(2) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his/her employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5, Title 47, USC, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained;

(3) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception;

(4) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state;

(5) It shall not be unlawful under this chapter or Chapter 121 of Title 18, USC, for any person-

(a) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(b) to intercept any radio communication which is transmitted-

1. by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

2. by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

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[3. by a station operating on an authorized frequency
[within the bands allocated to the amateur, citizen band, or general mobile
[radio service; or

[4. by any marine or aeronautical communications system;

[(c) to engage in any conduct which-

[1. is prohibited by Section 633 of the Communications
[Act of 1934; or

[2. is excepted from the application of Section 705(a)
[of the Communications Act of 1934 by Section 705(b) of that Act;

[(d) to intercept any wire or electronic communication the
[transmission of which is causing harmful interference to any lawfully
[operating station or consumer electronic equipment, to the extent necessary to
[identify the source of such interference; or

[(e) for other users of the same frequency to intercept any
[radio communication made through a system that utilizes frequencies monitored
[by individuals engaged in the provision or the use of such system, if such
[communication is not scrambled or encrypted;

[(6) It shall not be unlawful under this chapter-

[(a) to use a pen register or a trap and trace device (as
[those terms are defined for the purposes of Chapter 206 of Title 18, relating
[to pen registers and trap and trace devices); or

[(b) for a provider of electronic communication service to
[record the fact that a wire or electronic communication was initiated or
[completed in order to protect such provider, another provider furnishing
[service toward the completion of the wire or electronic communication, or a
[user of that service, from fraudulent, unlawful or abusive use of such
[service;

[(7) A person or entity providing an electronic communication
[service to the public shall not intentionally divulge the contents of any
[communication while in transmission on that service to any person or entity
[other than an addressee or intended recipient of such communication or an
[agent of such addressee or intended recipient;

[(8) A person or entity providing electronic communication service
[to the public may divulge the contents of such communication-

[(a) as otherwise authorized in Title 18, USC, § 2511 (2)(a)
[or § 2517;

[(b) with the lawful consent of the originator or any
[addressee or intended recipient of such communication;

[(c) to a person employed or authorized, or whose facilities
[are used, to forward such communication to its destination; or

[(d) which were inadvertently obtained by the service
[provider and which appear to pertain to the commission of a crime, if such
[divulgence is made to a law enforcement agency.

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139-1.3 Title 18, USC, § 2512 - Manufacture, Distribution, Possession, and Advertising of Wire, Oral or Electronic Communication Intercepting Devices Prohibited

Except as otherwise specifically provided in Chapter 119 of Title 18, USC, this section prohibits any person from intentionally-

(1) sending through the mail or sending or carrying in interstate or foreign commerce, any electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications;

(2) manufacturing, assembling, possessing or selling any electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(3) placing in any newspaper, magazine, handbill or other publication any advertisement of-

(a) any electronic, mechanical or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications; or

(b) any other electronic, mechanical or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral or electronic communications, knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce.

139-1.3.1 Exceptions

It shall not be unlawful for-

(1) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication; or

(2) an officer, agent, or employee of, or a person under contract with, the United States, a state or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications.

139-1.4 Title 18, USC, § 2513 - Confiscation of Wire, Oral or Electronic Communication Intercepting Devices

(1) This section provides that any electronic, mechanical or other device used, sent, carried, manufactured, assembled, possessed, sold or advertised in violation of Title 18, USC, §§ 2511 or 2512 may be seized and forfeited to the United States.

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(2) The FBI has been delegated authority to institute civil forfeiture proceedings pursuant to Section 2513. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

139-1.5 Title 47, USC, § 605 - Unauthorized Publication or Use of Communications

Except as authorized by Chapter 119, Title 18, USC, no person receiving, assisting in receiving, transmitting, or assisting in transmitting any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect or meaning thereof, except through authorized channels of transmission or reception-

(1) To any person other than the addressee, his/her agent, or attorney;

(2) To a person employed or authorized to forward such communication to its destination;

(3) To proper accounting or distributing officers of the various communicating centers over which the communication may be passed;

(4) To the master of a ship under whom that person is serving;

(5) In response to a subpoena issued by a court of competent jurisdiction; or

(6) On demand of other lawful authority.

No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto.

139-1.5.1 Exceptions

(1) This section shall not apply to the receiving, divulging, publishing or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships in distress or which is transmitted by an amateur radio station operator or by a citizens band radio operator;

(2) This section shall not apply to the interception or receipt by any individual or the assisting of such interception or receipt, of any satellite cable programming for private viewing if-

(a) the programming involved is not encrypted;

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(b) a marketing system is established and the individuals receiving such programming have obtained authorization for private viewing under that system.

139-2 POLICY

(1) [Upon receipt of reliable information concerning an interception of communications violation falling within the 139A or 139B classification, the appropriate United States Attorney (USA) should be notified. The USA may request a preliminary investigation be conducted. Such should consist of interviews of complainants, victims and up to three witnesses, along with contact with the telephone company, when appropriate. Unless circumstances indicate otherwise, investigations should also include interviews of subjects. USA will review results and advise on merits of the case. USA is authorized by DOJ to request full-field investigation and initiate prosecution and forfeiture.]

(2) [Allegations involving Federal, state or local public officials as subjects or victims are classified as priority matters. Such matters require prompt and thorough investigation. Evidence should be collected in a timely and effective manner. The same applies to matters where it is alleged that a Federal, state or local government agency is the victim. All other allegations concerning an interception of communications violation, not otherwise described in (3) below, are classified as nonpriority. A declination policy should be established with the appropriate USA for nonpriority matters, to include response to such allegations involving domestic marital disputes.]

(3) [Upon receipt of reliable information concerning an interception of communications violation falling within the 139C or 139D classification (Signal Theft), an initial effort should be made to assess the scope of the activity. Investigations should be limited to persons or companies which manufacture equipment or modify existing commercially available equipment to facilitate the theft of communication signals by others. Resources should not be expended in the investigation of end users. These matters should be presented early for an initial prosecutive opinion and thereafter closely followed with the USA.]

(4) [Allegations involving the interception of cable, satellite or electronic communications for significant commercial gain are classified as priority matters. Significant commercial gain is defined as the manufacture, sale or advertisement to sell any device the design of which renders it primarily useful for the surreptitious interception of protected or encrypted communications, wherein the revenue accruing to the subject exceeds \$25,000. All other allegations involving interception of communication/signal theft matters are classified as nonpriority and should be covered in a declination policy with the USA.]

[[5]] Significant allegations involving the theft of industrial or corporate proprietary information obtained as a result of the illegal interception of business electronic communications should be classified as Fraud By Wire (196 classification) or ITSP matters (87D classification) in lieu of handling under the IOC classification whenever applicable.

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[[6]]

[[7]] Agents who may be required to testify in wiretapping prosecutions should confer with the prosecuting attorney in order to formulate a plan for direct examination which would confine cross-examination, and in order to be prepared with the appropriate objections to the exploration of matters on cross-examination which are not relevant and are objectionable under the rules of evidence.

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SECTION 139. INTERCEPTION OF COMMUNICATIONS

[(8)] Attorney General Order No. 919-80, dated 12/18/80, sets forth procedures to be followed by officers and other employees of the Department when served with a subpoena or otherwise ordered to produce or disclose material or information contained in DOJ files or official information in the possession of its employees. Should Agents who are witnesses be compelled by the court, over objection, to give testimony concerning their training and experience, which testimony might reveal material and information within their official possession or contained in DOJ files with respect to confidential investigative techniques, provisions of Attorney General Order No. 919-80 should be invoked. If appropriate, the Government's prosecuting attorney should advise the court that the Attorney General has prohibited disclosure of such information in other types of cases because revelation thereof would be inimical to national security and defense of the United States. FBIHQ must be kept promptly advised of all developments in each case where this problem might present itself. (See MIOG, Part II, 6-1.)

[(9)] If complaint is based solely upon "beeps" or other unusual noises upon a telephone line, no investigation should be conducted in absence of other information indicating existence of an unauthorized wiretap and FBIHQ need not be notified of receipt of complaint, unless some unusual circumstances exist that would make it desirable to notify FBIHQ.

[(10)] No violation exists where one party permits a third party to listen to a telephone conversation without the second party's consent unless done for wrongful purpose (commission of crime or tort.)

[(11)] Surreptitious listening on a party line telephone and/or later divulgence of information obtained may be a violation and should be discussed with USA in same manner as complaints of other possible interception of communications violations.

[(12)] Generally recording telephone conversations by one party without the knowledge of another party is not a violation of this chapter.

139-3 INVESTIGATIVE PROCEDURE

(1) Check identification records and Bureau files to determine if subjects have prior convictions under the Interception of Communication statutes set forth in this section. USA should be advised of the subjects' prior interception of communication convictions.

(2) In cases where full-field investigations are initiated-

(a) Evidence must be obtained to prove there was an unauthorized interception, use or disclosure of a communication.

[(b) [In 139A and B matters both parties to the intercepted conversation must be contacted to ensure that neither consented. On 139C and D matters, Agents should ensure that investigation establishes the requisite knowledge and intent on the part of the subject to violate the statute. This primarily applies to retailers and advertisers.]

(c) Consider use of physical surveillances to identify subjects.

[(d) Obtain photographs of installation and evidence of equipment used for submission to the Electronic Analysis Unit (EAU), Engineering Section, Technical Services Division. Normally, devices need not be sent to the EAU for examination until full-field investigation requested by USA. The same evidence handling and shipping procedures should be followed as in submitting evidence to the FBI Laboratory (See Part II, Section[13-6.7] of this manual).

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SECTION 139. INTERCEPTION OF COMMUNICATIONS

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(g) Handle search and seizures pursuant to Title 18, USC, § 2513 in close cooperation and consultation with the USA. (See 139-1.4.)

139-4 MISCELLANEOUS

(1) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his/her official duty to conduct electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(2) Nothing contained in this chapter or Chapter 121, or Section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in Section 101 of such act, and the interception of domestic wire and oral communications may be conducted.

139-5 VENUE

Wherever an offense is committed, begun or completed.

139-6 REPORTING PROCEDURES

(1) Advise FBIHQ, by appropriate teletype, the same day, when opening priority cases involving public officials and/or Federal, state or local government agencies. In such matters, an LHM (original and three copies) must be sent to FBIHQ within ten working days of the opening of the case. This communication should include facts predicated the case, USA's opinion and initial investigative steps contemplated. Additional status communications are at the discretion of the SAC or at the request of FBIHQ. A closing LHM must be prepared for all investigations involving public officials and/or government agencies. This final LHM must restate the predication for opening the investigation, summarize investigative findings and detail the disposition of the investigation. The USA's opinion will be included where that office declines prosecution. Any prosecutive action should be detailed from indictment, information or complaint, through plea acceptance, trial disposition, and/or sentencing, as appropriate.

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(2) Upon receipt of complaints alleging violations, not involving public officials and/or government agencies, FBIHQ should be promptly notified by airtel, or by more expeditious means if good judgment so dictates, based on the specific circumstances. Questionable status should contain recommendations of SAC as to action desired. If no investigative action is requested by the USA, the initial airtel should indicate that the investigation has been closed. Confirm USA's opinion by letter. If investigation is requested, investigative results should be furnished to FBIHQ for dissemination to DOJ, Criminal Division, by LHM and/or prosecutive summary report. The original and three copies of an LHM should be forwarded. If prosecutive summary report deemed advisable, two copies should be forwarded to FBIHQ.

139-7 PENALTY - MAXIMUM

(1) Title 18, USC, Section 2511 - fine or five years' imprisonment or both. In addition to criminal penalties, civil penalties may be applied. See Title 18, USC, Section 2511 for specific circumstance where criminal and civil penalties apply.

(2) Title 18, USC, Section 2512 - fine up to \$10,000 or imprisonment up to five years or both.

(3) Title 47, USC, Section 605 - for first offense, fine up to \$25,000 or imprisonment up to 1 year or both. For subsequent offenses, fine up to \$50,000 or imprisonment up to 2 years or both.

In accordance with the above sections, there is a sliding scale of penalties in conjunction with the nature of the offense and contingent upon other contributing factors. The above code sections should be referred to for specific penalty considerations.

139-8 [COMPUTATION OF POTENTIAL ECONOMIC LOSS PREVENTED (PELP) VALUES IN SIGNAL THEFT MATTERS]

62 [[139-9] CHARACTER - INTERCEPTION OF COMMUNICATIONS]

[[139-10] SUBCLASSIFICATIONS AND PRIORITY CASE INDICATORS (PCI)]

See MAOP, Part II, 3-1.1, "FBI Classifications and Subdivided Classifications (Noting Those Classifications Designated as Priority Case Indicator Matters)."

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SECTION 190. FREEDOM OF INFORMATION-PRIVACY ACTS (FOIPA)

request letter and the response are to be maintained in the 190-0 or in a 190 control file, rather than in a separate, substantive file. This 190 file can also be utilized to maintain copies of correspondence where the only action by the field office is to forward the request to FBIHQ.

(3) The handling of all documents concerning the use of the tip-off provisions should be [in accordance] with procedures for the maintenance of the classified and informant information these documents often contain.

190-2.5 Field Office Records Referral Procedures

(1) The field office receiving a request for access to FBI records must determine what records (files) are responsive to the request. Existing Bureau instructions will determine where the records are processed, i.e., at FBIHQ, at the office receiving the request, or at the office of origin (OO).

(2) All main files which show the investigation was reported to FBIHQ will be processed at FBIHQ. Unreported main files will be processed by the OO. All "see" references normally are processed by the office receiving the request. Where the request is referred to FBIHQ, the FOIPA Section, [IMD,] will process the main file records, not only in the FBIHQ file, but also in the files of the office receiving the request and/or the OO, which are responsive to the request.

190-2.6 Seeking Access in Person

When a Privacy Act request is presented to a field office in person, the requester should be advised to put the request in writing or to complete an FD-706, after which the field office will process the request pursuant to the same time limits pertaining to requests received by mail. Should the individual wish to return to the field office to personally review processed documents, when available, it should be permitted. In addition, the requester is permitted to have one other person accompany him/her, providing the requester furnishes a statement authorizing a discussion of his/her personal records in the presence of this other individual. An FBI employee is to be present at all times during the requester's review of copies of FBI records in FBI space.

190-2.7 Consultation and Referral to Other Agency

(1) Where material to be released includes information previously obtained from another Federal agency, that agency is to be consulted prior to release of the information.

(2) Where the material being considered for release includes copies of the original documents obtained from another Federal agency, said documents will be referred to that agency whether on local or headquarters level. The field office should inquire at the local office of the Federal agency as to the proper disposition of the referral.

190-3 CONDITIONS OF DISCLOSURE

190-3.1 Written Authorization By Subject

The Privacy Act prohibits disclosure of personal information, with certain exceptions, to any person or other agency unless specifically authorized in writing by the person to whom the record pertains.

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190-3.2 Exceptions

The Act provides for twelve exceptions to this disclosure prohibition. The exceptions used most often by the FBI in disseminating information from the central records system are:

(1) Information from FBI files may be disseminated as a proper "routine use" without the subject's authorization to any Federal Executive Branch agency to the extent the information is relevant to an authorized function of such agency. Information also may be disclosed as a routine use to a member of the Federal Judiciary if considered relevant to an authorized function of the recipient. In addition, information may be disclosed to a state or local criminal justice agency for an legitimate law enforcement purpose. ("Routine Use" is defined in the Privacy Act as the use of such record for a purpose which is compatible with the purpose for which it was collected.) Such a routine use dissemination does not constitute any change in past policy or procedures as the FBI always has been authorized to disseminate its records to other Government agencies for official business only. Such dissemination will continue under this new routine use procedure.

(2) Background and descriptive information on Federal fugitives is disseminated as a routine use to the general public and the news media to assist in the apprehension of the fugitives.

(3) News releases are disseminated as a routine use to the general public and the news media concerning apprehensions and other accomplishments.

(4) Public source information is similarly disseminated as a routine use on a continuing basis.

(5) Information is disclosed to private individuals and/or organizations when necessary to solicit information or cooperation for an authorized purpose, i.e., when it is necessary during the course of an official investigation to seek information from private individuals such as their observations, descriptions, or account of events which transpired. In such instances it might be necessary to disclose the nature of the crime of which the subject was suspect or similar personal information about the subject. Also, information may be disclosed to the private sector to the extent necessary to protect life or property.

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190-3.3 Accounting of Disclosures

(1) Each time a record pertaining to an individual is disseminated to a person or other Federal, state, local, or foreign agency, whether orally or by any type of communication, written or electronic, an accounting of such dissemination, consisting of the date, nature, and purpose of each disclosure as well as the name and address of the person or agency to whom the disclosure is made, must be maintained for at least [six] years or the life of the record, whichever is longer, following the disclosure.

(2) The Act provides for access by the individual subject-requester to the accounting of disclosure made of records pertaining to him/her. Normally, the FBI will release this accounting to the individual at his/her request; however, the FBI is exempt from this particular statutory requirement and, where circumstances so dictate, the FBI will deny such a request, e.g., where dissemination was of a sensitive nature to an agency such as National Security Agency, Central Intelligence Agency or Drug Enforcement Administration.

190-4 INFORMATION COMPILED FOR CIVIL LITIGATION

(1) The Privacy Act does not permit an individual access to any information compiled in reasonable anticipation of a civil action or proceeding brought either by the Government or against the Government.

(2) In order for information to be denied a requester based on this provision, Office of Management and Budget (OMB) has indicated the civil action actually must have been filed so that the agency is on notice, as the original intent of this provision is to protect information collected by or at the request of the Office of the USA in preparation for civil litigation brought by or against the Government.

190-5 REQUIREMENTS IMPOSED BY THE PRIVACY ACT

(1) Only that information about an individual which is relevant and necessary to accomplish a purpose authorized by statute, Executive order of the President, or by the Constitution is to be recorded in FBI files.

(2) When interviewing an individual in an applicant- or civil-type investigation to solicit information about that individual, himself/herself, and not about someone else, the individual must be apprised in writing, of:

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(a) The authority, whether by statute or Executive Order, which authorizes solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(b) The principal purpose for which the information is intended to be used;

(c) The routine use which may be made of the information;

(d) The effects on the interviewee, if any, of not providing all or any part of the requested information.

(3) Written forms containing the above information in all of the suitability- and civil-type classifications are maintained in each field office. At the termination of the interview, the form should be left with the interviewee. [Note: This requirement is not necessary in those applicant matters which are referred to the FBI by another agency or department, including the Department of Justice. The FBI conducts the interviews in these instances with the understanding that the referral agency or department notifies each person it solicits information from of the Privacy Act requirements described in subparagraph (2).]

(4) All information about an individual is to be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness in any determination made concerning the individual based on such information. Only information meeting these four standards should be disseminated to other agencies.

190-5.1 Restrictions on Information Relating to First Amendment Rights

(1) The FBI is prohibited from maintaining records describing how any individual exercises rights guaranteed by the First Amendment unless authorized by statute or by the individual, or unless the particular record is pertinent to and within the scope of an authorized law enforcement activity.

(2) This restriction prohibits the collection, maintenance, use or dissemination of information concerning an individual's religious or political beliefs or activities, or membership in associations or organizations, unless:

(a) The individual has volunteered such information for [[his/her]own benefit;

(b) The information is expressly authorized by statute to be collected, maintained, used, or disseminated; or

(c) The activities involved are pertinent to and within the scope of an authorized investigation, adjudication, or correctional activity.

190-6 CRIMINAL PENALTIES

190-6.1 Unauthorized Disclosure

(1) Any officer or employee of any agency, who by virtue of [his/her] employment or official position, has possession of, or access to, agency records which contain individually identifiable information, the disclosure of which is prohibited by this Section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material

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SECTION 196. FRAUD BY WIRE

196-1 STATUTE

(1) Title 18, USC, Section 1343, "Fraud By Wire."

(2) Fraud by wire, radio, or television "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communications in interstate or foreign commerce, any writings, signs, signals, pictures, or sound for the purpose of executing such scheme or artifice, shall be fined not more than \$1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."

(3) Conspiracy to violate Title 18, USC, Section 1343 must be prosecuted under the general conspiracy section (Title 18, USC, Section 371).

EFFECTIVE: 06/26/91

196-2 ELEMENTS

An attempt to defraud coupled with the sending of or causing to be sent in interstate or foreign commerce by wire, radio, or television any communication,

(1) for the purpose of executing a scheme to defraud, or

(2) for obtaining money or property by means of false or fraudulent pretenses, representation, or promises.

EFFECTIVE: 06/26/91

196-3 POLICY

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EFFECTIVE: 06/26/91

196-3.1 Reporting Requirements

Reports, in prosecutive summary form, will be required only when prosecutive proceedings are being initiated. Biweekly summary airtels with letterhead memorandum (LHM) suitable for dissemination to the Department of Justice are necessary in undercover or project-type cases. Routine cases and those where preliminary investigation reveals no FBI jurisdiction should be quickly resolved in keeping with the quality-over-quantity concept. In confidence scheme swindles where \$5,000 or more is allegedly taken from the victim(s) and the initial facts do not reflect an interstate or foreign commerce aspect the Department of Justice has requested a preliminary investigation be conducted limited to establishing the presence of a Federal violation as well as identifying the alleged swindlers and their techniques. Reports and summary airtels should be submitted to the Economic Crimes Unit, White-Collar Crimes Section, FBIHQ.

EFFECTIVE: 06/26/91

196-3.2 No Federal Jurisdiction

Facts regarding cases which involve lesser sums than \$5,000 and no use of interstate communications may be furnished to the Bureau, particularly where the subjects have been apprehended or identified by local authorities. The purpose of furnishing this information is to build up the Bureau's store of knowledge on known con artists.

EFFECTIVE: 06/26/91

196-4 INVESTIGATIVE PROCEDURES

EFFECTIVE: 06/26/91

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196-4.1 Basic Principles

Since the FBW Statute, enacted 7/16/52, was patterned after the Mail Fraud Statute, mail fraud principles have been applied to FBW prosecutions. As in the former it is not necessary that the victim of the scheme be actually deceived or suffer a loss. Moreover, while it is necessary to show that the subject caused the use of a wire it is not necessary to establish that he/she directly participated in the use of the wire. It is sufficient if some communications were the foreseeable result of his/her act.

EFFECTIVE: 07/18/86

196-4.1.1 | Deleted |

EFFECTIVE: 07/18/86

196-4.2 Use of Credit Cards and Illegal Telephone Devices

The fraudulent use of telephone credit cards to obtain service without charge is a FBW violation as is the use of so-called "blue boxes" and "black boxes." These devices are used to circumvent the recording of proper listing or recording of telephone locations or calls. Instances wherein it can be shown that individuals are manufacturing or selling these devices as a commercial enterprise may constitute a conspiracy violation of the FBW Statute.

EFFECTIVE: 07/18/86

196-4.3 Election Laws

Violations of FBW involving election laws must be immediately brought to the attention of the United States Attorney's office which in turn must secure departmental authority prior to requesting further investigation.

EFFECTIVE: 07/18/86

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196-4.4 Obtaining Evidence

(1) In proving the interstate communication, expeditious obtaining of Western Union or telephone company records are necessary. Parties to a telephone conversation may also provide evidence of the fact of communication, particularly as to where they placed the long distance calls. Recognition of the voice is not necessary to identification of the person with whom the conversation is alleged to have been had. Like any other ordinary fact, it may be established by direct evidence or circumstances.

(2) The scheme or artifice to defraud through a series of false representations to the victim by the subject can be shown most directly by proving that the latter was neither capable of fulfilling his/her promises nor so inclined.

(3) Often the subject uses someone else's financial statement, possibly obtaining a loan commitment from another broker or letter of credit from bankers who are collaborators in the scheme. In fraud situations, the subjects seldom, if ever, make admissions of illegal acts or fraudulent intent. Moreover, there is seldom one specific act that, standing alone, is illegal. The essence of the FBW case is to establish the fabric of circumstantial evidence by comparing the representations and promises on the one hand and the actual facts on the other hand.

EFFECTIVE: 03/23/92

196-4.5 Referral to Federal Communications Commission (FCC)

Section 1343 of Title 18 refers to individuals who may use interstate or foreign communications in execution of a scheme to defraud and does not refer to communications companies which are regulated by the FCC. Complaints alleging that a company licensed by the FCC is knowingly permitting the transmission of messages, the purpose of which is the execution of a scheme to defraud, should be promptly referred to the FCC.

EFFECTIVE: 03/23/92

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196-4.6 Confidence Schemes

(1) Sections 1343 and 2314 remain the principal statutes under which frauds by con artists are investigated. To investigate cases of this nature properly, it is helpful for the Agent to be familiar with the modus operandi and terminology of the confidence scheme operators.

(2) In cases in which the loss amounts to over \$5,000 or in which interstate or foreign communications have been used, a thorough investigation should be promptly initiated which should begin with a thorough interview of the victim, and any witnesses who saw the con artists. If the victim is in possession of documents, checks, telephone logs, or serial numbers of the currency used, they should be obtained in all cases.

(3) To establish a violation of Section 2314 involving the transportation of \$5,000 or more, it is necessary to prove that one or more of the subjects actually transported \$5,000 or more in interstate commerce. Efforts should be made to identify the con artists, ascertain their itinerary after the swindle, and conduct whatever investigation possible to locate the funds in another state as evidence that it was transported.

(4) [Deleted]

EFFECTIVE: 03/23/92

196-4.7 Conspiracy

A violation may be established in any FBW matter even though no actual loss occurred, if the projected swindle was to amount to \$5,000 or more and the proposed victim was caused to travel interstate either in a build-up to the swindle or to obtain funds. If the swindle amounting to \$5,000 or more actually takes place, and the victim is caused to travel interstate as part of the process, a violation has occurred even though the funds are never carried out of state.

EFFECTIVE: 07/18/86

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• 196-5 VENUE

— Any district in which the offense was begun, continued and completed (Title 18, USC, Section 3237).

EFFECTIVE: 07/18/86

196-6 CHARACTER - FRAUD BY WIRE

EFFECTIVE: 07/18/86

196-7 DELETED

EFFECTIVE: 07/18/86

196-8 DELETED

EFFECTIVE: 07/18/86

196-9 DELETED

EFFECTIVE: 07/18/86

196-10 DELETED

EFFECTIVE: 07/18/86

PART I

SECTION 263. OFFICE OF PROFESSIONAL RESPONSIBILITY MATTER

[[263-1 BACKGROUND

(1) The Office of Professional Responsibility (OPR) was established in the Inspection Division in October, 1976, in order to bring about a greater awareness of professional responsibility throughout the FBI and to seek a more definitive and uniform policy in our administration of disciplinary personnel matters. OPR has three basic functions: (1) supervise and/or investigate all allegations of criminality and serious misconduct on the part of FBI employees; (2) maintain liaison with the Office of Professional Responsibility, Department of Justice (OPR/DOJ); and, (3) monitor disciplinary action taken concerning all employees of the FBI.

(2) It is OPR's goal to ensure that all such allegations against FBI employees are promptly, objectively, and thoroughly investigated and reported to the Administrative Services Division (ASD) in a timely fashion for their consideration and appropriate action. The maintaining of the integrity of the FBI as an institution is paramount while conducting these mandated responsibilities. The rights of our employees, however, are to be similarly guarded.

263-2 NOTIFICATION OF FBIHQ UPON RECEIPT OF ALLEGATIONS OF CRIMINALITY OR SERIOUS MISCONDUCT

(1) As is set forth in Part I, Section 13 of the Manual of Administrative Operations and Procedures (MAOP), all allegations of employee misconduct must be reported to the Administrative Summary Unit (ASU), ASD. Allegations of criminality or serious misconduct, however, must be reported simultaneously to the FBI's OPR. OPR supervises and/or investigates all allegations of criminality or serious misconduct on the part of FBI employees. Judicial criticism of an Agent's conduct in findings of fact, opinions, or court orders, whether oral or written, is to be considered an allegation of serious misconduct and reported to OPR as set forth below.

(2) When an allegation is received concerning criminality or serious misconduct, the appropriate Assistant Director, SAC, or Legal Attache, must advise OPR of the allegation, preferably by telephone. OPR will, in turn, advise ASU/ASD. A confirming airtel, with a copy designated for the ASU/ASD, should be directed in a sealed envelope to FBIHQ, Attention: OPR. OPR will determine and advise who will conduct the investigation. In those matters involving nonserious misconduct or performance-related deficiencies, in all likelihood, the SAC will be advised to handle those matters directly with the ASU/ASD. In most cases, the Assistant Directors, SACs, or Legal Attaches will personally conduct the necessary investigation of OPR matters under the supervision and monitoring of OPR. Representatives of OPR normally investigate only those allegations involving FBIHQ officials, SACs, ASACs, and Legal Attaches, and sometimes FBIHQ and Field Supervisors, or when circumstances of a particular matter dictate.

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SECTION 263. OFFICE OF PROFESSIONAL RESPONSIBILITY MATTER

(3) Timeliness of reporting and resolution of OPR matters are extremely important. It is imperative that upon receipt of an allegation of criminality or serious misconduct against an FBI employee, that OPR be advised promptly in order that appropriate instructions may be given. There should be no delay in contacting OPR while attempting to "round out" an allegation of possible criminality or serious misconduct.

(4) If an allegation of misconduct within the responsibility of OPR arises out of a substantive case (pending or closed), the matter will be coordinated closely between OPR and the FBIHQ Division which has overall responsibility for the substantive matter. FBIHQ Divisions should immediately inform OPR of allegations of possible criminality or serious misconduct which come to their attention and forward that portion of the investigation to OPR for further processing. The allegations arising from a substantive case will be carried separately under the Office of Professional Responsibility Matter caption and handled as a separate "263" classification investigation so that the substantive investigation and/or prosecution is not hindered.

(5) The following is a list of items which for the most part are considered OPR matters. They are furnished for information and are not considered all inclusive. Any question of whether the matter should be handled by OPR should be resolved by contact with OPR:

- Abuse of authority
- Arrest by local authorities (or subject of investigation by local authorities)
- Civil rights violations
- Conflict of interest
- Driving While Intoxicated (both Bureau cars and personally owned automobiles)
- Failure to advise the Bureau of contacts with law enforcement agencies
- False statements during applicant processing
- Falsification of documents
- False reporting
- Franking privilege violations
- Fraud Against the Government
- Improper association/relationship with criminal element
- Improper association with informants
- Judicial criticism
- Narcotics matters
- Outside employment
- Retaliation matters
- Sexual offenses
- Subject of a Federal criminal investigation
- Theft
- Unauthorized disclosure of information
- Unauthorized use of a Bureau vehicle
- Unauthorized passenger in a Bureau vehicle
- Unprofessional conduct
- Whistleblower matters

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SECTION 263. OFFICE OF PROFESSIONAL RESPONSIBILITY MATTER

(6) Other infractions, such as lost badges or minor personal misconduct, will continue to be handled by the ASD. These matters are well defined and should continue to be handled as in the past. Any question as to whether a matter is or is not within the responsibility of OPR must be referred to OPR for a determination in this regard.

263-3

INVESTIGATION

(1) Investigation necessary to develop complete, essential facts regarding any allegation against Bureau employees must be instituted promptly and every logical lead which will establish the true facts should be completely investigated unless such action might prejudice pending investigations or prosecutions, in which event FBIHQ will weigh the facts along with the recommendation of the Division Head.

(2) The record of the inquiry shall include the initial allegation; the investigative results; aggravating or mitigating circumstances; statement of specific charge(s); and the employee's answer(s) including defenses to the specific charge(s), if any.

(3) SACs should ensure the objectivity in personnel investigations conducted by field offices by not assigning supervisory personnel to them who have a direct working relationship with the employee(s) under investigation. OPR is likewise alert to this possible conflict of interest and will discuss this with the SACs when cases are initially reported to OPR.

(4) Requests to conduct audits of the computer systems activities of employees who are suspected of misconduct or improper performance of duty will be handled only with prior notification to FBIHQ. The term audit refers both to review and/or evaluation of prior transactions or activities of a user and procedures designed to monitor the ongoing activities of a user. The proper form for such a request is a formal written communication to FBIHQ with a request directed to the Technical Services Division (TSD), Systems Development Section (SDS), to conduct the audit. In exigent circumstances, which dictate the need for immediate institution of an audit, requests may be made telephonically to OPR and subsequently confirmed in writing. In instances where telephonic requests are authorized, the level of authority is at the ASAC level or above in the field offices and at the Section Chief level or above at FBIHQ, with the exception of requests emanating from OPR. Telephonic requests for user activities audits made by OPR will be authorized at the Supervisory Special Agent level.

(5) Approval to conduct the audits will be made at the Section Chief level in SDS, based on the technical feasibility and resource constraints. If the audit cannot be conducted or if additional information is needed to formulate the audit, SDS will contact the requestor. The results of each audit conducted will be reported on an FD-302 and disseminated to OPR and the requestor, should it be different from OPR. The original FD-302 will be forwarded to the office of origin. In those instances where exigent circumstances dictate that the results of the audit be telephonically disseminated, the results will be disseminated by TSD to OPR and to the requestor, should it be different from OPR, and the telephonic response subsequently confirmed in writing to OPR and the requestor.]

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INTERVIEWS OF EMPLOYEES

(1) Interviews of employees involved in allegations of criminality or serious misconduct should be conducted at the earliest logical time and in a forthright manner following coordination with OPR. There should be no evasiveness on the part of the Bureau official conducting the interview.

(2) The employee should be fully and specifically advised of the allegations which have been made against him/her in order that he/she may have an opportunity to fully answer and respond to them. The employee must be entirely frank and cooperative in answering inquiries of an administrative nature. If allegations are possibly criminal in nature, the employee has the right to seek counsel in the same vein as any other individual.

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(3) Such interviews must be complete and thorough with all pertinent information obtained and recorded so that all phases of the allegations may be resolved. The interviews must not be unduly protracted and should be held to a reasonable length by proper preparation and recognition of the purpose of the interviews.

(4) The inquiry shall not be complete until the specific allegations which may justify disciplinary action are made known to the employee who may be disciplined and the employee is afforded reasonable time to answer the specific allegations. The employee's answers, explanations, defenses, etc., should be recorded in the form of a signed, sworn statement which should specifically include the allegations made against the employee in an introductory paragraph. The statement is to be prepared following an in-depth interview under oath of the employee by the Division Head or designated supervisory representative. The employee is not merely to be asked to give a written response to the allegations, but is to be interviewed in an interrogatory fashion, and a signed, sworn statement prepared from the results by the interviewing official. Since the statement represents that which the employee is willing to sign and swear to, he/she retains the right to make corrections or changes before doing so. If those changes or corrections differ materially from what the employee stated during the interview, that fact and the nature of the statements should be separately recorded. The employee should be sworn prior to the interview in order that the information furnished during the interview will have been under oath. Should there be any question on the part of the interviewing official as to whether a particular allegation (set of facts) might justify disciplinary action, he/she should contact OPR in order to resolve this prior to the interview so the employee will be ensured of an opportunity to appropriately respond.

(5) The results of interviews of nonsubject, "witness" FBI employees in OPR matters should also be recorded in the form of signed, sworn statements. If there is some reason for not doing so, this should be coordinated with OPR/Inspection Division.

(6) When interviewing employees during administrative inquiries to solicit information about themselves or about their own activities, the employee should be provided the Privacy Act notice described in MIOG, Part I, 190-5(2), explaining the purpose of the inquiry and how the information will be used.

(7) When interviewing employees, or others, to solicit information about the subject of an administrative inquiry, the person interviewed as a source should be provided, if appropriate and necessary, the opportunity to request an express promise of confidentiality, as described in MIOG, Part I, 190-7, and SAC Memorandum 51-77(C), dated 11/15/77, in order to protect the source's identity should the subject of the inquiry submit a Privacy Act request for access to records of the inquiry. The source should be cautioned that if a formal adverse personnel action is taken against the subject of the inquiry pursuant to Chapter 75 of the Civil Service Reform Act, the information furnished, along with the source's identity, must, by law, be provided to the subject, if any information provided in that statement is used in whole or in part to support that personnel action. In addition, pursuant to certain administrative inquiries and possible judicial proceedings, it may be necessary to furnish the source's identity if any information provided in the source's statement is used in whole or in part to support a personnel action. The principles discussed in 263-5, *infra*, are also applicable to an interview of an employee regarding the actions of others, to the extent such answers might reveal criminal misconduct on the part of the employee being interviewed.

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[263-5 ADMINISTRATIVE OR CRIMINAL PROCEEDINGS - USE OF INTERVIEW FORMS

(1) Prior to the interview of an employee against whom allegations of criminal misconduct have been leveled, a decision must be made as to whether the goal of the interview is to obtain a statement admissible in subsequent criminal proceedings or whether the goal is to compel the employee to make a full statement of the facts in order to ascertain what administrative action, if any, is appropriate. This decision is to be made by OPR in coordination with the OPR/DOJ.

(2) To ensure that employees being interviewed are fully and consistently aware of their rights and obligations, two forms have been adopted for use in such interviews. The Office of Professional Responsibility, DOJ, has endorsed the use of these forms. These forms are only to be utilized during official inquiries and only when authorized by OPR.

(3) Neither of these two forms (FD-644 nor FD-645) which are described below are to be routinely used during the investigation of a shooting incident. They will be used only in those shooting inquiries when instructed to do so by FBIHQ as set forth in MIOG, Part II, Section 12-1.9.

The decision as to which form will be used in a particular inquiry will be made by OPR, FBIHQ, on a case-by-case basis, in accordance with the principles set forth below. For your information, there are certain prosecutive guidelines which have been agreed to by OPR/DOJ. The factual situation of any particular allegation will be considered by OPR in line with those prosecutive guidelines.

[263-5.1 Criminal Proceeding Contemplated or Possible

(1) Form FD-644 captioned "Warning and Assurance to Employee Requested to Provide Information on a Voluntary Basis," is to be utilized in situations where an employee is provided an opportunity to voluntarily respond to questions concerning allegations of job-related misconduct which have the potential for criminal prosecution, but wherein the employee is not being compelled to answer questions or provide a statement. Use of this form should assure that any statements obtained will be freely and voluntarily given and, hence, admissible in any future criminal proceeding.

(2) Full Miranda warnings will be given to employees only in situations where the employee to be interviewed is in custody or is significantly deprived of his/her freedom of action, an arrest is clearly intended at the conclusion of the interview, or whether in custody or not, the employee being interviewed has previously been arrested or formally charged and prosecution is pending on a Federal offense and the questioning concerns that offense or a related Federal offense.

(3) Whenever Form FD-644 is utilized, an interview log should be prepared in accordance with the Legal Handbook for Special Agents, Section 7-9.

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[263-5.2 Inquiry Solely for Administrative Purposes

(1) In a situation where the allegation, if true, has the potential for criminal prosecution, but a decision has been made not to seek an admissible statement (but rather, to compel the employee to fully and candidly answer all questions concerning the alleged incident), Form FD-645, captioned "Warning and Assurance to Employee Required to Provide Information," should be used. However, prior to the use of this form in any instance where the allegation, if true, would have potential for Federal criminal prosecution of the employee to be interviewed, OPR/Inspection Division must present the facts of the case to OPR/DOJ and obtain an initial opinion that the matter in question should be handled administratively rather than criminally. This is necessary because any incriminating statement obtained after use of Form FD-645 will not be admissible in a criminal prosecution of the employee.

(2) In a situation where the allegation, if true, has potential for non-Federal prosecution, and a decision has been made by FBIHQ to compel full answers from the employee regarding the matter under investigation, Form FD-645 should be used.

(3) In all other instances where an employee is being interviewed in connection with an official administrative inquiry, Form FD-645 should be used.

(4) There is no Sixth Amendment right to counsel in purely administrative interviews. Therefore, even if the employee specifically requests to have an attorney present during the course of the interview, the Bureau is not legally obliged to agree to this condition. Any administrative decision to allow the presence of counsel during an administrative interview is to be made by OPR, FBIHQ.

(5) An interview log is not required when Form FD-645 is utilized. Those conducting such administrative interviews of employees should be alert, however, to circumstances where good judgment might warrant preparation of an interview log; for example, in those interviews of a particularly sensitive nature or in those concerning serious misconduct involving veterans which may ultimately be heard before a Merit Systems Protection Board.

[263-6 POLYGRAPH EXAMINATIONS OF BUREAU EMPLOYEES

(1) All polygraph examinations of FBI employees and those who have made allegations against FBI employees must be approved by the Assistant Director, Inspection Division, or another person designated by the Director.

(2) Polygraph examinations of employees will be administered away from their own office of assignment. This procedure will help protect the confidentiality of the investigation/inquiry and lessen the outside pressure on the employee which could be associated with an examination conducted with knowledge of an employee's friends and associates.

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(3) Polygraph examinations of Bureau employees are to be administered by an FBIHQ examiner. In the event an FBIHQ examiner is not available, the examination will be conducted by an examiner designated by the Polygraph Unit, FBIHQ.

See MIOG, Part II, 13-22.13.1, 13-22.13.2, 13-22.13.3, and 13-22.14 for additional instructions and information regarding polygraph examinations of employees who are subjects of a criminal investigation or administrative inquiry.

263-7 REPORTING

(1) In most instances, after OPR has been initially notified of the allegation, it will be satisfactory for the responsible division head to report the facts pertaining to the serious misconduct or criminality by airtel setting forth a concise statement of the situation together with supporting documentation and statements. In all cases, whether or not it is believed administrative action is necessary, a statement that administrative action is, or is not, recommended must be made.

(2) [These cases should not be opened in the Field Office Information Management System (FOIMS) prior to obtaining Bureau approval to open the investigation.] A separate file should be opened and indexed under a "263" classification for each OPR investigation and [the file should be] maintained in the SAC's safe. This file number should be included on all communications between field offices and OPR. Such communications, when directed to the SAC, should be to his/her personal attention and should be enclosed in sealed envelopes when submitted to FBIHQ, Attention: OPR. Proper names of individuals in OPR cases should not be entered in the title field in the case management system of [FOIMS.] The title field should contain the words "SEE SAC" only. [The Index Driven Case Title (IDCT) software will automatically insert the words "SEE SAC" during the data input of the index record. Keystroking the letter "S" in the "Special" field on the index record will generate "SEE SAC" on the first line of the title in the case application. It should be noted that the file number will not be displayed in the general indices of the field office.] OPR cases are to be opened in FOIMS as auxiliary office (AO) cases utilizing the FBIHQ file number as the Universal Case File Number. These cases should be opened with a pending status, not as "DEAD" or "ADM" status. Upon completion of the investigation, the status should be modified to RUC.

(3) Copies of the allegations and subsequent investigation should not be placed in the employee's field office or FBIHQ personnel file. Only if some form of administrative action is taken will there be any need to address the allegation in the employee's personnel file. This is satisfactorily handled by a designated copy of the approved justification memorandum and/or addendum(s) being placed in the employee's personnel file at FBIHQ as well as copies of the outgoing communication to the employee being placed in both the field office and FBIHQ personnel files.

(4) OPR will advise SACs and Assistant Directors when the results of OPR investigations have been reviewed by OPR and referred to ASU/ASD for appropriate action.

263-7.1 Investigative Reports

(1) The results of most OPR investigations may be submitted by cover airtel to OPR. In those matters, however, involving more complicated situations or matters involving criminality which may need to be discussed further with the Department of Justice, they should be submitted to FBIHQ by investigative report which should be thorough, precise, and to the point. Any question concerning whether or not to submit an investigative report should be resolved by consulting with OPR.

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(2) Synopses of OPR matter investigative reports should be complete to include all allegations, the results of the investigation, and the subject employee's responses to these allegations. Consideration should be given to including a table of contents in these investigative reports.

(3) Three copies of the investigative report (four copies if the matter involves a substantive case) should be submitted by cover airtel in a sealed envelope to FBIHQ, Attention: OPR/Inspection Division. The cover airtel should contain the SAC's observations and comments, mitigating or aggravating circumstances, as well as the SAC's recommendations for administrative action.

(4) FBIHQ is the office of origin in OPR matter investigations. Upon completion of an investigation, originals of signed, sworn statements, Forms FD-644 and FD-645, etc., should be furnished to OPR.

263-8 CIVIL RIGHTS ALLEGATIONS AGAINST FBI PERSONNEL

Upon receipt of a complaint involving civil rights allegations against FBI personnel, the following procedures are to be followed:

(1) Advise the Civil Rights Unit (CRU), CID, and OPR by telephone followed by appropriate communications so that FBIHQ may furnish appropriate guidance. The CRU will coordinate with OPR and other FBIHQ components and advise the SAC concerning the proper handling of the matter.

(2) If a civil rights complaint arises during an administrative inquiry, the pertinent administrative inquiry relating only to the civil rights allegation must stop in order to resolve any criminal violations. That portion of the administrative inquiry may not resume until authorized by FBIHQ.

(3) OPR and CRU/CID will coordinate the presentation of the facts of the allegation to OPR/DOJ and the Civil Rights Division (CRD), DOJ, to determine if a criminal investigation is warranted. If no criminal investigation is warranted, the matter will be administratively handled by OPR. If the CRD/DOJ requests a criminal civil rights investigation, the CRU/CID will advise the SAC to initiate an investigation which should be reported to FBIHQ pursuant to Part I, Section 44 of the MIOG, entitled "Civil Rights," unless advised to the contrary by FBIHQ.

263-9 DEPARTMENT OF JUSTICE OFFICE OF PROFESSIONAL RESPONSIBILITY

See MAOP, Part I, Section 1-23.